United States Court of Appeals

for the Second Circuit

APPENDIX

74-1290

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs-Appellants,

VS.

LEE NATIONAL CORPORATION,

Defendant-Appellee.

UNITED STATES COURT OF APPEALS
FILED
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APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, an unincorporated association and United Rubber, Cork, Linoleum and Plastic Workers of American, AFL-CIO, Local 102, an unincorporated association, Plaintiffs, -against- Lee National Corporation, Defendant.	Before: HON. WHITMAN KNAPP, District Judge. 66 Civil 1154

New York, September 19,20,21, 1973

Testimony of Joseph Conway

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS
U.S. COURTHOUSE, FOLEY SQUARE, N.Y. N.Y. 10007 TELEPHONE (CORTLANDT 7-4580)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

United Rubber, Cork, Linoleum and Plastic Workers of America AFL-CIO, an unincorporated association and United, Rubber, Cork, Linoleum and Plastic Workers of American, AFL-CIO, Local 102, an unincorporated association,

Plaintiffs,

-against-

Lee National Corporation,

Defendant.

66 Civil 1154

Before:

HON. WHITMAN KNAPP,

District Judge

New York , September 19, 1973
10:00 a.m.

APPEARANCES:

Auerbach & Labes, Esqs.,
Attorneys for Plaintiffs,
William Auerbach, Esq.,
Stanley W. Taylor, Esq.,
George Vasko, Esq., of Counsel

Poletti, Freidin, Prashker, Feldman & Gartner, Esqs.,
Attorneys for Defendant,
Peyton H. Moss, Esq,
Roger Briton, Esq., of Counsel

- - -

(Case called.)

MR. AUERBACH: Plaintiff is ready, your Honor.

MR. MOSS: Defendant is ready, your Honor.

THE COURT: Which of you two are going to do the [illegible]aming?

MR. AUERBACH: I am, your Honor.

THE COURT: And that is all.

MR. AUERBACH: Yes, your Honor.

MR.MOSS: Before the witness is called, your Honor, I wouldlike to make a [illegible]atement forthe defendant on the record.

THE COURT: Certainly.

MR. MOSS: Defendant believes that in order for the record to be complete that a statement should appear on the record as to the events which have transpired since the last trial day here.

I would like the record to show that on February 26th, when the plaintiffs rested their case for the second time, after calling Mr. Clairmont and recalling various union witnesses, the defendant moved to dismiss.

THE COURT: Doesn't the record show all this?

MR. MOSS: It does not show everything that has happened, your Honor, since that time.

The defendant moved to dismiss the complaint and

without requiring argument from defendant in support of their motion to dismiss the Court heard argument from the plaintiffs, at length, and at the close of the argument dismissed the second cause of action and asked for briefs on the first cause of action with the intent of entering an order for both so the time for an appeal would run from the same date.

The last brief on the first cause of action was filed with the Court on ~~May 16th. The Court,~~ March 19. On May 16th, the Court, without any advance notice to either side, filed a memorandum and an order which dismissed the first cause of action ~~which~~ but requested briefs on whether or not the second cause of action should be reopened with respect to the question of ~~whether or not~~ why the defendant had not used the new tread tuber as a bargaining tool to resolve the ~~dollar valuation~~ job evaluation issue.

At a meeting in the Court's chambers on May 30, 1973, attended by Mr. Auerbach for the plaintiffs and myself and two of my colleagues for the defendant, a schedule was set up for the filing of briefs with respect to the tread tuber and after the schedule was arranged the Court indicated to Mr. Auerbach the thought that the plaintiffs should have called Mr. Joseph Conway as a witness because in the Court's view there was evidence on the record which indicated that Mr. Conway might be a good witness for the

plaintiffs. Thereafter, ~~Therefore~~ briefs were filed with respect to the tread tuber.

The defendant's original brief was filed after the Court allowed an extension of a week's time on June 27th, and the plaintiffs' brief with respect to the tread tuber was filed after a request for an extension of time on July 31st, and with the plaintiffs' brief with respect to the tread tuber plaintiffs attached a letter of transmittal informing the Court that they had fortuitously been unable to locate Mr. Conway and he was prepared to respond to a subpoena.

THE COURT: You can disregard that. That was my opinion before I saw your reply. I paid no attention to the assertion.

That letter suggested that Mr. Moss or the defendant in some way impeded -- that was nonsense and we disregard it. It is perfectly obvious to me that if the plaintiffs wanted Mr. Conway they could have written you a letter and asked you. And whether or not you were delighted to get such a letter you would have had more sense than not to respond to it.

MR. MOSS: On August 17th the defendant filed its brief with respect to the tread tuber on August 17th and on August 27th the Court filed a memorandum stating that upon

the plaintiffs' representation that they would produce Mr. Conway the Court was going to reopen the case for the purpose of allowing them that opportunity and on September 11th the Court filed an additional memorandum clarifying its memorandum of August 27th on two points:

One that its direction to the plaintiffs to thoroughly interview Mr. Conway was not ~~attempted~~ intended to inhibit the defendant from interviewing Mr. Conway before ~~this~~ his testimony, and, also, to make clear that Mr. Conway 's testimony was not to be restricted to the tread tuber, which was the original grounds for disturbing the decision made on February 26th, but he was to be available to be questioned on all purposes.

The defendant makes this statement simply so that the record may be complete as to the events which have led up to today's hearing and particularly to respectfully make one particular point.

The defendant feels that the course of events since February 26, the last trial day, have been unusual, to say the least, and it seems clear to the defendant that the case is being reopened and Mr. Conway called at the very least at the suggestion of the Court. Since it is only natural that when one is instrumental in arranging the course of events one has a tendency to have a more than usual

personal interest in how those events turn out than if they simply unrolled before one.

The defendant is concerned and wishes the Court to understand its concern that the circumstances which have accompanied Mr. Conway's appearance here and the reopening of the case should not endow his appearance here with any differentiation as between witnesses called in the usual course of events and in weighing his testimony, whatever it may be, that the defendant is hopeful that the Court will recognize that he is just another witness who has appeared here and that the intervention of the Court in securing his presence here does not surround him with some sort of unusual status as a witness in the case.

THE COURT: I always charge jurors when they are here that the fact that the Court asks a question gives the answer no more relevance than when counsel asks the question. The only thing that matters is the answer.

I don't know if the juror is paying attention to that or I am paying attention to that.

MR. AUERBACH: May I make a statement, your Honor?

THE COURT: Yes.

MR. AUERBACH: In view of Mr. Moss' statement I would like to point out, since he has brought up certain

technicalities, that as I read the report of the last day of the actual hearing your Honor indicated that he was going to dismiss the second cause of action but had not yet done so.

I would also like to point out that it is the defendant's position that we had established --

THE COURT: I ruled you did not.

MR. AUERBACH: Of course. Obviously.

MR. MOSS: Mr. Auerbach evidently meant it was the plaintiffs' position.

THE COURT: You said defendant.

MR. AUERBACH: Obviously I didn't mean that. It was the plaintiffs' position that we had established enough of a case to go forward and respectfully it would have been error if your Honor had granted.

We feel that we had obviously made our case without Mr. Conway. Obviously, in view of your Honor's indication of your ~~finds~~ findings and rulings, under those circumstances we are very glad to adopt your suggestion and renewed our efforts to find Mr. Conway. We found him and produced him.

THE COURT: Don't you say you renewed your efforts. You had not made any efforts. All you had to do was write a letter to Mr. Moss and say where is Mr. Conway and he would have had to answer you. Don't tell me you renewed

your efforts.

MR. AUERBACH: All I want to state for the record so it would not appear that -- it was our opinion that we did not need Mr. Conway to establish our case and that by putting Mr. Conway on we don't retreat from that position.

THE COURT: Of course not.

MR. AUERBACH: I was not going to make a statement but I didn't want some Appellate Court by my not answering to indicate any agreement with Mr. Moss.

THE COURT: I think the Court will take judicial notice that the lawyers never agree with each other when they are on opposite sides.

MR. AUERBACH: I call Joseph Conway.

J O S E P H J. C O N W A Y, called by the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AUERBACH:

Q Mr. Conway, would you tell us if you were employed by the defendant Lee Corporation in the years 1962 and 1963?

A Yes, sir.

Q In the years 1962 and 1963 would you tell us what your title was?

A Personnel director.

Q Were you based in Conshohocken, Pennsylvania?

A Yes, sir.

Q As such personnel director, would you describe for us your job description or your function, any way you want to put it?

A I had the responsibility for the entire gamut you might say of personnel matters, the employing of help, the hiring and firing, as they call it, the establishing of piece work rates, the setting up of seniority, a list, the negotiation of union contracts, various types, the full group insurance program of group life, sickness and accident and so forth, the responsibility for all workmen's compensation matters, responsibility for the hiring and operation of a dispensary for the employees, the first aid department.

I think I have covered the major items.

Q Negotiation of contracts?

A Yes, I stated that.

Q How long --

A That is negotiation of labor contracts.

Q For how long had you been employed in that capacity by Lee?

A When I went with the company in September of 1927 we had no such person as a personnel director. The

personnel matters were all supervised by the executive vice president and when I was hired in September of '27 I was hired as ~~a secretary~~ assistant to the executive vice president and in this office all of the so-called personnel and labor relations matters were initiated.

THE COURT: What was the year that Mr. Clairmont bought in?

THE WITNESS: I believe it was in '62. But I am not sure of that because --

THE COURT: When did you come into contact with him?

A I would suppose it was the latter part of '62. I am not sure of it.

THE COURT: When did he sell out? When did he leave the scene?

THE WITNESS: That was after I left the scene.

THE COURT: That is what I wanted to know.

MR. AUERBACH: I believe, your Honor, the record --

THE COURT: I am sure it does reflect that.

MR. AUERBACH: I hope to refresh his recollection on that. I think Mr. Clairmont, and he is here and can correct me if I am wrong, testified that he became a member of the board of directors in June of 1962. He testified that he was working with Mr. ~~Cartwaite~~ GARTHWAITE at that time even

though he didn't become chairman until September.

THE WITNESS: I didn't finish.

Q I am sorry.

Go ahead.

A About 1942 or 1943 the powers that be in the company decided that we should have a full time personnel director and I was offered the job and accepted it. So I was offered the job and I accepted it. So I was the full-time personnel director of the corporation from somewheres around 1943. I know it was during World War II. I am not positive. I know it was before the first of the union, when they first started to organize the Conshohhocken plant. It must have been close to 1943. I served as personnel director until I retired in February of 1964.

Does that answer your question?

I forgot what the original question was.

Q That anwers the question.

THE COURT: What was your age upon retirement?

THE WITNESS: 66-1/2.

THE COURT: Did you retire because of age or for any other reason?

THE WITNESS: I retired because I wanted to get out.

THE COURT: You were not happy?

THE WITNESS: The circumstances -- we had a

compulsory retirement rule for salaried employees which covered the fact that when a salaried employee reached age 65 he was required to retire on the first of the month following his 65th birthday. Some time around the early part of 1962, which was the year during which I became 65, the then chairman of the board and the president, Mr. Garthwaite, Mr. Garthwaite, Jr., called me in one day and reminded me of the fact that I would be scheduled to retire on October 1st of 1962 following my 65th birthday in September of that year, but they told me that -- the rule was that you had to retire unless you were requested by the company to stay on. So they told me that they would like to have me stay on beyond my 65th birthday. So I answered in this way:

I said, well, we have union contracts coming up for negotiations in 1963, both here and in the Republic plant in Youngstown. I had some connection with those negotiations also. So I said if it is all right with you fellows I will see you through these 1963 negotiations after which I'd like to take another look at it and see whether you want me to leave and we could have another understanding after the 1963 negotiations are completed.

THE COURT: And then what?

THE WITNESS: You mean where do we start from

there?

I go all the way back to when Mr. Clairmont came in the picture.

THE COURT: I'm curious as to why you retired.

THE WITNESS: Continue with that?

THE COURT: Please do.

THE WITNESS: When I agreed to stay on and see ourselves through the 1963 union negotiations I had no idea that things were going to happen the way they did. We had never had any poor labor relations prior to that time and at that time I didn't foresee any particular difficulty in negotiating the '63 contracts any different from what we had had in the past.

Of course we had differences of opinion in negotiations but I didn't foresee any great difficulties or any particular headaches so -- my health was good. Thank the Lord it still is. I didn't see any reason why I should leave at that time because I knew that that would mean that they would have to have another personnel director and having been familiar with the various union agreements ever since they had first initiated I felt that the company had been good to me and that I should remain for a while at least until we got them on the road to these revised agreements that we would negotiate in 1963, so that we could then --

then they could pick it up from there and I was breaking in a young man whom I thought could be my successor.

That is really the reason why I stayed on.

THE COURT: I am curious to know why you left.

THE WITNESS: I left because of the situation which was existent, which occurred, it started, I would guess, the latter part of 1962 and by that time I had agreed to stay on, but the developments that started occurring -- understand, your Honor, I am quite sure, that these things happened more than ten years ago and my memory is not always as clear as the memory of some of you young fellows.

THE COURT: I accept that as a compliment.

THE WITNESS: I am doing my best to recall dates.

THE COURT: I have demonstrated I can't recall them. So relax.

THE WITNESS: It must have been the latter part of 1962 -- that was when I think -- I don't know how broad you want this statement --

THE COURT: I am trying to get at your motives.

THE WITNESS: I will have to give them to you in all honesty.

I have to get into some statements regarding Mr. Clairmont. They are not intended to throw anything on him because it just happened that he came into the picture

at that time and his coming into the picture caused some obvious thinking on my mind as to what the future would hold forth. It is no secret that I believe in the early part of 1962, or it might have been the latter part of 1961, I am not sure -- first of all, we used to have an executive committee which consisted of the president and -- the president was the chairman of the board at that time -- the production superintendent, the research and development manager, the plant engineer, myself -- in other words, the top man in charge of each major department of the company which we called the executive committee.

Some time in '61 or early '62 Mr. Garthwaite, who always chaired these meetings, told us that he had learned that somebody was trying to buy into the company and he had been doing some checking and he developed the fact that there was a man by the name of Kahn whose reputation as far as we could find out was not one that we were too pleased to have trying -- we felt that this man at the time was trying to get control of the company.

A little later on, I would guess it was probably the early part of '62, Mr. Garthwaite stated that there was another man in the picture trying to buy sizeable blocks of stock.

Before that though he had been doing some

investigating about this fellow Kahn and it developed that the purchases were being held in a brokerage account and it was pretty difficult to find out who was actually purchasing them but he did develop, he thought, a true statement that the stock was at that time being purchased by some group in, I believe Canada, either Canada or England.

I think that Mr. Kahn acquired a seat on the board. I am not sure of that.

Be that as it may, the nect thing we heard from Mr. Garthwaite about the financial affairs of the corporation was that there was another man in the picture, and this other man was Mr. Clairmont. I don't know when he started buying stock but I think we felt, we underlings who didn't know the actual goings on, I think we felt that Mr. Clairmont and Mr. Kahn were more or less adversaries or competitors in trying to gain control of the corporation.

Some time, I don't know when, during 1962 we learned from Mr. Garthwaite that Mr. Clairmont had acquired, I believe it was, 20 per cent. He claims to have acquired 20 per cent of the corporation's stock and he requested a seat on the board, which he was elected to.

I would guess that that must have been about the

middle of 1962, but I'm not sure of those dates.

Then later, I suppose about the fall of '62, Mr. Clairmont became more active in the affairs of the corporation.

I don't remember the dates but we had a pension and a welfare agreement with both plants, the unions of both plants, and, well, before that time, when it became known throughout all the employees that Mr. Clairmont had then acquired a sizeable piece of the corporation, the news was not received very enthusiastically by the employees. There had been some publication or two issued which dealt with Mr. Clairmont and those things, those magazines, books, started showing up in the plant and they were passed around from one employee to another. The result was the employees were not too happy about what had taken place.

THE COURT: Do you includeyourself in the definition of employees?

A Yes, I would.

Then, as Mr. Clairmont became more active we were instructed to try to get some revisions in the pension plan, the wording of the pension plan, and I think later some of the wording of the clause that covered the severence pay on possible closing of the plant.

At that time I started to get a little concerned because we had never -- when we negotiated those various agreements we usually followed whatwas known as industry practice and usually we followed the big four rubber companies, Firestone, Goodyear, Goodrich and U.S. Rubber and als General Tire, so those agreements that we had now being confronted with, trying to revise, had been practically copied by what was then the industry practice.

Then Mr. Clairmont tried to get us, or tried to get the union to agree, to certain changes in these agreements and it was at that time that I started to get concerned. That was, I suppose, the latter part of '62 or the early part of '63. After that, when it came time to start negotiating the working agreement I was presented with a large volume of paper on which appeared the company's ~~conference~~ proposals to be negotiated and, of course, that common practice all the time: The company, as you know, proposes certain things and the union proposes certain things, but I had never seen or heard of a proposal such as these, as a result of which it caused more concern in my mind.

Although I have always been a so-called company man, I didn't change although I felt sure in my own heart that those proposals that the company made would never

be acceptable. I can cite a few of them as examples, if you want.

THE COURT: I understand. I get your feelings.

THE WITNESS: You asked me how --

THE COURT: Yes. I understand.

THE WITNESS: So we are now up to negotiation time in 1963, say May or June of 1963.

We could not come to any agreement with the company on the proposals and the union struck on July 16th, after the company had given them a set of work rules that were to be adopted on July 18th if we were to operate that plant in the future.

Those work rules were not acceptable to the union and I think the union offered to continue working on the basis of the old agreement. I'm not positive. I think they did.

By that time naturally I was very much alarmed. There was a strike on our hands and it didn't appear to me that there was any chance to get together unless the company withdrew several of the very objectionable points that the union would not go along with.

So here I am more or less committed to stay on unless these agreements that had been negotiated -- well, as a final result they were negotiated. They were negotiated but there was never any conclusion, any satisfactory

conclusion to either party.

Then you may wonder why I stayed from July '63 until February '64, when I retired.

There were a lot of other things that had to be taken care of. One was, we had quite a hassle over unemployment compensation for employees. The union claimed that they had been locked out. You don't hear so much of that term any more but back in those days it was a common expression.

The union claimed to have been locked out and the company claimed that the union had struck on their own volition.

So we had quite a case with the Pennsylvania Unemployment Compensation Bureau on that. I had to sit in on all those negotiations.

In addition to that we had some adjustments that we had to make in connection with the group insurance and we used to check off union dues and remit to the local.

I think we had to work out the details of closing that up.

So I was very busy on these other matters for the remainder of the year 1963 and there again I decided that I would stay without requesting retirement until we got

this unemployment compensation case out of our hair.

So in February of 1963 -- this thing had been going on ever since it struck, about six months back and for the -- I felt that we had gotten just about as far as we could get with this unemployment compensation thing and we had other things pretty well taken care of. We had been going through a series of lay-offs after the strike which I had to handle for a good long period.

I would receive a list of employees -- I'm talking about office employees particularly because the plant was not operating. I had to arrange for the lay-offs, interviews and lay-offs, of these employees. We used to have a list of such employees that I had to go through every Friday.

But by the time February rolled around in 1963 I felt that those lay-offs were just about terminated too. There were not very many left. So that's when I went to Mr. Heinrich. My doctor had been after me to retire. I had a little trouble with my heart away back.

He said, "I think you got toomuch pressure on you now. I'm going to write you a letter and recommend that you request retirement."

Well, I didn't bother, I don't think, to give Mr. Heinrich the letter. I just told him that the doctor

said he thought I better retire and I felt in view of the circumstances and the fact that things didn't look bright at all for the future that I should ask for retirement -- I think it was February 8th or some such date in 1964.

THE COURT: Is it a fair summary to say that from the time Mr. Clairmont got there you took a dislike to him and didn't see eye to eye with him?

THE WITNESS: I don't like to correct you, but I would not use the word dislike.

THE COURT: I am trying to get at your feelings.

THE WITNESS: My feelings changed in that we had very good labor relations. We had very good employee relations ever since I came with the company in 1927. The company I think was founded about 1883 and we never had any trouble with employee relations.

Then when I could see the handwriting on the wall, more or less, with these proposals of the new regime, I might say, I knew, it was quite obvious, that our relations in the future were not going to be anywheres near as satisfactory as they had been in the past.

So I don't like to use the term dislike. I can't say I ever disliked him, but things had changed. I really didn't feel as though I would ever be able to negotiate some of the items that I was called upon to negotiate, but

understand I was still loayal; I was still loayal to my employer. It didn't make any difference whether it was Mr. Clairmont or Mr. Heinrich or Mr. Garthwaite. I have always prided myself on being a loyal employee and when I was told to try to get something I tried my best to get it.

But there is a difference. In the former days I was told to get something and as a rule I could not get it all the time but I got a lot of it satisfactory to the management, but then with the new regime some of the items that I was supposed to get I was unable to get. I tried my best to get them.

THE COURT: Thank you.

Gentlemen, that question was my own question designed to get his feelings toward the people involved. I don't want to preclude either side from bringing out any facts that developed in the course of that question. You are not precluded by anything he said.

BY MR. AUERBACH:

Q Mr. Conway, in the course of your work as the personnel director and in the period 1962, 1963, and in the years preceding that, five, ten, fifteen years, as far back as you want to go, did you keep in touch with the market, the labor market, and the union packages and

union practices, not only in your company but in the rest of your industry and even outside of your industry?

A Yes, sir. We always did.

We had a very good interchange of information as far as the industry was concerned. There was and still is an organization known as the Rubber Manufacturers Association. I was a member of the Labor Relations Committee of that association.

We interchanged all kinds of information with respect to labor matters. When union contracts came up we knew -- well, I think the auto industry -- our industry is probably still doing the same thing, I don't know, but we knew what the union was asking for before. We always tried to time our negotiations to follow the big four rubber companies because we always wanted to make sure that we never gave any more than the big four did.

So we kept in touch, very close touch, with everything as far as labor matters were concerned, everything that was happening in the tire industry.

In addition to that I was also a charter member of the Labor Relations Committee of the Manufacturers Association of Montgomery County, Pennsylvania. That was a similar movement -- that included local. That was local. The Rubber Manufacturers Association information was

industry. We also had the same kind of interchange of information with respect to the local companies in the area but not -- there were only a couple of tire companies in that area: Firestone, and Firestone had a Pottstown plant in Pottstown; and Goodrich had a plant in Oaks, Pennsylvania but outside of those two plants they were non-rubber companies but we followed the same format in that we acquired information with respect to labor practices, employment practices, and so forth, as they occurred in the local area of Montgomery County where we were situated.

Q Did you handle labor relations for the company with any other unions?

A Yes.

Q Would you please tell the Court when and where and what they were?

A I guess the maximum was approximately 55 sales outlets, company owned -- we called them branches but they were not branches in that they had nothing to do with manufacturing. They were really sales outlets throughout the country. Of the 50 or 55 that we had at one time there were a couple of the service people, the tire changers and people like that, who became organized by various unions. We had quite a few organized by the Teamsters Union. There were some others. We had a branch here in

Manhattan and they were represented by some, I don't remember the name, retail clerks or something like that. There were other types of jobs but the larger portion of them were represented by the Teamsters. It was my responsibility to negotiate all of those contracts.

Q Did you in the course of your work and your membership in these associations also have lectures or symposiums or exchange of information as to labor relations practices and the handling of grievances and things like that locally and elsewhere in the country?

A Yes. We had a continuing setup of such meetings and we had one overall seminar, annual seminar, which we always, I guess, held here in New York. That was usually a three-day seminar which was attended by practically everybody -- not everybody but representatives from practically every rubber company in the country.

We also had similar types of meetings in the other association, the Manufacturers Association of Montgomery County, for the exchange of information.

Q I take it thatthis exchange of information not only covered negotiations of contracts but the day-to-day handling of problems such as grievances, setting of rates, job evaluation, piece work, and the like?

A Yes.

Q In the contract and rates that you had in 1962, the contract that ran out on June 30, 1963, how did your rates stack up, your labor rates, your union labor rates, with your competition?

A We used to exchange information which showed the job classification earnings. We did not necessarily exchange information with respect to rates because the procedures were naturally different in the various plants. What everybody was concerned with was how much, for instance, a tire builder in Conshohocken was earning as compared to a tire builder in Oaks, Pennsylvania or a tire builder in Firestone's Pottstown.

We exchanged information regularly on what we call job classification earnings.

THE COURT: Did you exchange information on productivity on the various jobs of the workers?

A Yes. We did that too.

Q Would you tell the Court what you found or what in your opinion was the situation both with regard to rates, earnings, and productivity?

THE COURT: Earnings and productivity.

Q I am sorry. Only that.

A Up until the time we were going through this period of lay-offs, when the production flow was ~~barely~~ really

affected because of the fact that we had plant wide seniority and employees who were being laid-off were bumped through one job to another, you never felt -- I never felt you could use those earnings for comparative purposes.

THE COURT: When did this period start that you mentioned?

THE WITNESS: I would say probably in early '63.

But prior to that time we always felt that we were very competitive. In fact, on quite a number of those job classifications, in our plant, they were lower than they were in some of the other plants. In some cases they would be higher, but our plant average earnings were never by any means anywhere near the highest. We always felt that the plant's overall earnings were very competitive.

THE COURT: What about productivity?

THE WITNESS: The productivity prior to '63, we felt it was competitive also. There were some pieces of equipment, if you want to pick them out, that were -- those particular pieces of equipment might not turn out as many pounds or as many tires as some other company's pieces of equipment, but overall we felt that our productivity -- I don't think we could have stayed in business as long as we

were in business if our productivity was not pretty much in line.

The little fellow has a disadvantage over those big four fellows.

Q Mr. Conway, this has nothing to do with productivity but I would like to ask you -- in the course of your work I take it you got out on the floor of the plant fairly often and in the course of your work would you know who the major customers were at any given time?

A Sure.

Q You knew of Pep Boys?

A Yes.

MR. MOSS: May I request that Mr. Auerbach ask questions to the witness and not suggest did he know this or that. Mr. Conway is quite able to understand whom he understood the customer to be.

THE COURT: We all know that Pep Boy was a customer.

MR. MOSS: The question is had Mr. Conway known that? What his knowledge was, what the sales were, who the customers were, is a matter of some consideration here in the case.

THE COURT: You knew that Pep Boys was a customer?

A Most assuredly. With a company the size of ours how could you help but know who your major customers were, especially -- even if I didn't get out into the factory and we were having these executive committee meetings those things would come up for discussion, the customers and customers requirements and so forth.

Q To the best of your recollection did the company have Pep Boys as a customer before Mr. Clairmont took over?

A To the best of my recollection I'm pretty sure we had a contract with the Pep Boys before Mr. Clairmont became active.

THE COURT: That must be a matter of record.

Go ahead.

Q To the best of your recollection during the period from the time Mr. Clairmont came in until the strike, if you call it a strike, in July of 1963, did the company obtain any major new customers?

A I didn't know of any.

Well, there was -- we had a customer Cordovan Associates. They sell through large outlets such as around the Philadelphia area. There was the Penn-Jersey Stores. Colonial Stores was another customer of theirs. I don't remember that but it seems to me we were working with Cordovan Associates before Mr. Clairmont entered the picture. I'm not sure of that.

THE COURT: All this must be a matter of record and not recollection of the witness ten years later.

MR. AUERBACH: I have a point I want to develop, your Honor.

THE COURT: Go ahead.

Q Did you continue to have Cordovan up until July of 1963?

A I don't remember.

Q Before Mr. Clairmont came into the picture you described to the Court that you had good labor relations. Did you always give in to the union?

A Oh,no. No. We nad what you might call knock-down and drag-out negotiations at times but we usually resolved them. We were able to resolve them. But we never came in with a list of proposals of such volume as we went in with in 1963. There was a thick package of proposals about so thick (indicating), and we usually had maybe about 20 proposals that we would be in with on other years. The union always would beat us. They always had more than we did, but we found we would -- maybe we would have to trade two for one or something like that to get them down to our level. That was always typical of our union and I think it is typical of most of them. They throw everything at you they can think of hoping that

they will get some of them, but we had some hot negotiations.

We used to meet, I guess, during -- I would guess -- 60-day period prior to the termination date of the agreement. We would take two months to negotiate a contract.

Q After Mr. Clairmont came in whom did you report to?

A Originally I was reporting to Mr. Garthwaite, Sr. and Jr. Then as Mr. Clairmont became more and more active I would report -- then Mr. Heinrich came on the scene I think around Christmas time of ~~1963~~ 1962 and I was reporting to him also because Mr. Clairmont was not headquartered in Conshohocken. He was still operating out of his New York office. I was also -- as a rule I think I could say that I was reporting to Mr. Heinrich and Mr. Heinrich would report to Mr. Clairmont.

I did report some to Mr. Clairmont but not as much because he was not on the scene.

THE COURT: I have some recollection about a direct wire from Conshohocken to his New York office.

Did you talk to him on that on occasion?

THE WITNESS: On occasion but not very much. That direct wire connection was in Mr. Heinrich's office.

As I recall Mr. Heinrich used to call Mr. Clairmont usually after office hours in the afternoon and I suppose, I was not there to hear everything, he reported to Mr. Clairmont what happened during that day. Most of those calls, as I recall them, he used to make at the end of the day. He used to put in an awful lot of hours there.

THE COURT: Mr. Heinrich?

THE WITNESS: Yes.

He would call Mr. Clairmont after office hours. I'm not saying exclusively. A lot of his calls as I recall it were made then. I was not there for a lot of them.

THE COURT: You were there for some of them?

THE WITNESS: Yes.

THE COURT: Gentlemen, we have to remember the reporter. We will take a ten-minute recess.

(Recess.)

THE COURT: For your information I plan to break at a quarter of one to 2 o'clock.

MR. AUBERBACH: Thank you.

BY MR. AUERBACH:

Q Did Mr. Clairmont or Mr. Heinrich, after they came into the picture, ever tell you that the union contract was ~~an important~~ a poor one?

(Pause.)

Q Before May of 1963, or April?

A Before April or May of 1963 I don't recall that they ever did because we had not actually been discussing the working agreement at that time but prior to our opening of negotiations -- I am just -- I made a survey of the various union labor agreements, and I put them on large columnar sheets, and that showed the major features of all the various companies included and that was prior to our opening of negotiations.

Then I gave them to Mr. Clairmont and I believe he used that information in connection with the proposals that were finally presented to the union.

I think we started negotiations that year about May 29th. Prior to my having been presented with this list of company proposals Mr. Clairmont may have -- I can't remember definitely -- stated that he didn't like our agreement. I know he did point out, well, this one has this clause here compared to ours and this one has this clause here and so on and so forth, which would indicate to me that he was not too happy with a particular clause that we had.

I don't know what you are driving at, Mr. Auerbach.

THE COURT: That is one thing you don't have to worry about.

A I am trying to answer, your Honor, as truthfully as my recollection permits.

THE COURT: That is all you have to do.

Q Before May, 1963, did either he or Mr. Heinrich ever say, in words or substance, that this is a -- that we have a bad contract?

THE COURT: I think he answered that question. He doesn't remember words used and he gave the general impression of their attitude.

A Prior to that time I don't think they did because I don't think we were discussing the working agreement at that time. We were more -- at least I believe Mr. Clairmont was more concerned with the pension agreement and the severance pay agreement during that period of time. I don't believe we were discussing the Lee working agreement at that time. I may be wrong. That is my recollection.

Q Prior to May of 1963 did either he or Mr. Heinrich tell you that the men in the plant were not working hard enough?

A I believe so. Not prior to May of '63.

Q Incidentally, on the subject that you brought up, various contracts, this one has a clause here and this one

has a clause there , does one contract ever have all the good clauses?

A In reverse, I would love to have a contract like that too if I had all the best contracts for the company, but nobody has all the best in any one agreement.

During negotiations, as you understand full well and everybody else, you have got these issues and you try to trade. You got one issue that means probably to you as a company than it meant to let us say Firestone, so we wanted to do our best to try to get that clause in the contract. The union has something over here that isn't too bad, so we try to trade. We try to give in on one and get the union to give in on one that we don't figure would hurt us too badly. So you end up with similar clauses -- with a clause dealing with the same subject but they're not the same clauses because of what I have just explained.

Do you understand it, your Honor?

Q I would like you to look at PTO Pretrial Order No. 87A, 88A and 89A. 87A is a proposal of changes in pension and service award. I would like you in 87A to look at No. 4 and the number 2 -- the number 4 on the first page and No. 1 on the second page, particularly that where it says an employee -- they want to put an amendment ~~staying~~ stating an employee whose employment with the company is

terminated by the company on or after the effective date but not as a result of or during a strike started for any reason other than the violation by the company of the provisions of the working agreement with the union, and also to similar language on page 2, paragraph 1 again with regard to the strike --

THE COURT: Do you have extra copies of that so I may look at it?

MR. AUERBACH: I believe we have, your Honor.

THE COURT: What are you showing the witness?

MR. AUERBACH: On 87A, the first page, paragraph 4.

Q Mr. Conway, on 87A, you recall that proposal made by the company?

A Let me look at it.

Q Take your time.

A (Pause.) This is changes requested by the board of directors on July 24, 1962.

THE COURT: This is a proposal that the company made to the union?

MR. AUERBACH: That is right. That's a request that they made.

A Yes, I recall that.

Q Was that particular language, referring to the strike, something that you suggested to the company?

A No, sir.

Q Before it was submitted or before it was given to you to submit, as the case may be, was your opinion requested?

A No, sir.

Q Was there any precedent in the industry for such clauses?

A From the best of my recollection I don't believe that particular phase of this clause was -- I don't remember ever having seen that in anybody else's agreement in the entire industry.

Q In your opnion, was it reasonable to make a demand on the union for the insertion of such a clause?

MR. MOSS: Your Honor, I object to Mr. Conway's opinion as to whether something was reasonable or not.

THE COURT: It does not control.

A No. I don't think it was.

THE COURT: Did you talk to anybody in the company about that at all?

A I don't recall having talked to anybody. As I recall, I don't remember who was present at the meeting when this thing was presented, but --

THE COURT: What meeting? The meeting --

THE WITNESS: There must have been a meeting

at which this document or these proposals were presented to the union representatives.

THE COURT: I was thinking about inter-company talk. Did you talk to anybody within the company about this?

THE WITNESS: I don't recall that I did, your Honor, but this is something that I recall. From the best of my recollection it did not appear in any other contract.

Q I would like to show you 88A and point out that in addition to a similar clause in Article 2,Section 6 and ask you to look at this.

This is another proposal in a series of amendments. This says if the funds then available in the pension trust fund are insufficient to provide for the shares under sub paragraph 2nd, 3rd or 4th above, if the provisions for all shares under previous subparagraphs, each share under such subparagraph 2nd, 3rd or 4th in that order or priority should be allocated out of the remaining funds available and should be reduced pro rata to the extent of the remaining funds available in the pension trust fund and there shall be no liability or obligation on the part of the company or its officers, employees, agents, directors or stockholders for any deficiencies except the company will remain liable for all pension benefits of those retired

employees referred to in subparagraph 1st of this paragraph 6. That's all.

The other one I have referred to, that has a similar no strike clause.

First read this over and take your time.

Do you recall having seen that document?

A Yes, sir.

Q Were you consulted on the advisability of making that request of the union?

A No, sir. As far as I know this was something that was given to me to be attempted to be negotiated and I don't know for sure whether it came directly from Mr. Clairmont but it was my understanding that it was at his direction that I was to try to negotiate this into our pension welfare agreement.

THE COURT: From whom did you get that understanding that it was at his direction?

THE WITNESS: I can't recall, your Honor.

THE COURT: There is nothing wrong in not remembering.

THE WITNESS: It is pretty hard to remember who did what, you know.

Q Was there any precedent in the industry for any paragraph like that one?

A I remember that at the time that I had read these clauses that I am pretty sure I checked similar agreements of quite a few of the other tire companies and I didn't find anything like this in any agreement. In fact, as a point of information, when we first negotiated this pension service award agreement, also the so-called SUB agreement, they were copied practically verbatim from industry agreements of a similar type, but this particular item that Mr. Auerbach refers to I could not find in anybody else's agreement, as I recall.

Q May I ask you, Mr. Conway, did you think this was a reasonable request or demand to make of a union?

A I didn't think there would be any chance to get it because it was not in keeping with what was contained in other companies' agreements.

Q The Court asked you before whether you began to get worried after Mr. Clairmont came in. Did these requests that we have just been referring to in these two documents make you at all concerned either for yourself or for the people?

A It did. It was about this time when I started to feel real concern because , frankly, I was starting to think in my own mind that he seemed to be so intent in getting these particular items into this agreement that I could

not help but worry about the fact, I was wondering what was going through his mind and whether he had in mind that we are either going to negotiate the kind of contract that I want, working agreement that I want, or we are going to have to close down. If we close down I want these things in these agreements in the event we shut the plant down.

I say I was reading his mind --

THE COURT: Did you ever talk to him about it?

THE WITNESS: I talked to him about it but -- I don't like to say this, your Honor.

THE COURT: You are under oath so you have to say whatever comes to your mind.

THE WITNESS: I talked to him about it but if you knew Mr. Clairmont like I got to know him you would have found out, you can talk, but it doesn't amount to very much but he is going to have his way anyhow.

THE COURT: Do you remember any particular conversation you had with him?

A Not any particular conversation. I probably said, I am saying I probably said, that these particular things that we are trying to get here were not included in anybody else's contract. I'm saying I probably said that. That would be my natural reaction.

THE COURT: You can't remember any specific

conversation?

THE WITNESS: No. He wanted these things in very badly and that is what really worried me. I was afraid that maybe that was in the back of his head.

Q Mr. Conway, I now show you pretrial order No. 89A and I would like to read from Article 5. There is a clause in Article 5 which says as follows:

Article 5 is duration and termination. This is a proposed amendment to the company proposed amendment to the agreement for pension service award and insurance benefits.

This particular clause or sentence says: Any notice of termination of the working agreement in accordance with the provisions thereof shall give the right to either the union or the company to open for renegotiation or amendment all the subject matters covered by this agreement irrespective of the provisions of paragraphs 6 and 7 of this Article 5.

Would you take a look at that, Mr. Conway. Tell us whether you recall seeing that around that time.

A Yes. I recall this very clearly.

Q Was that something you recommended or were consulted on before it was drawn up?

A No, sir. This one I didn't feel was a fair proposal at all. None of the other people in the industry

provided for cancellation of their pension plan in the event of notice of termination of the working agreement as far as I knew. I could not ascribe/subscribe to this particular thing at all.

Q Mr. Conway, I would like to get to the subject of job evaluation.

During the course not of negotiations but under the contract, the working agreement, that was in existence at Conshohocken, the period 1961 to June 30, 1963, if you ever found yourself or the plant manager reported to you that a particular rate was way out of line, did you feel yourself locked in or did you feel you had a remedy?

A I didn't feel locked in. What we would usually do if we came across a rate that we felt was completely out of line, we would either follow one of two alternatives: No. 1, we would call the union together and lay all the cards on the table and tell them we have to do something about this rate. After discussion, sometimes quite lengthy, we might possibly work out an agreement with the union that we would go in and we would study it again. The No. 2 alternative was that we would call the head of the industrial engineering section in and tell him the story and tell him to send one of his men in to study this particular job with the idea of trying to determine whether there were any changes in

what was known as the SOP, standard operating procedures, so that we might be able to just have a new time study on this particular job by maybe changing some of the operations in the job around to such an extent that we could claim according to the union agreement that there had been "extensive re-arrangement of work or methods", and then we would go in on the basis of the fact that we had extensively re-arranged the operations in this particular job and we would restudy them.

Q When you say we called or we spoke to industrial engineering, do you mean you or we the company?

A We the company.

I would like to add a little bit to that if I could.

Q Go ahead.

A I guess it is apropos at this time.

I have to skip this last ten years when everything is a blank as far as the operation of Lee is concerned, but prior to that time I would say, ten years prior to that time, we had one time study man in the whole plant and as a result of that we didn't have real up-to-date methods of time study, so I would guess about five years prior to 1963 we decided that we should have an industrial engineering section and get into the matter of studying various

jobs and evaluating the performance and so forth,because we felt, we knew, industry was doing likewise and we decided we would start a program with the objective in mind of getting our various procedures and rates in line.

So we hired -- I think we ended up with about five or six of these industrial engineers.

THE COURT: On your payroll?

THE WITNESS: Yes, sir. They were under my jurisdiction. In fact the fellow who I was breaking in to succeed me was an industrial engineer and time study man who had worked for Firestone.

Then we had another fellow we hired who had done time study and industrial engineering work for B.F. Goodrich.

So we put this second fellow in charge of this industrial engineering section with the instructions that he should -- we recruited the men for him except in collaboration with him.

As I say, we got five or six of them. We started reviewing the procedures first. Then, when we came to the point where we felt we had the procedures pretty well lined up then we would start time study.

We were right in the midst of this program when the strike occurred.

Q Had you been able to reevaluate jobs in the methods

you talked about by calling in your industrial engineer and having him change the job a little bit? Were you able to get any jobs that you thought were out of line corrected?

A Yes. We had quite a few grievances on new rates as they were established. I think it is unusual for a union not to agree -- a new rate seems to be the pattern.

THE COURT: Unusual for a union not to agree?

THE WITNESS: Not to agree about a change in rate.

So what we would do, it was the management's prerogative to change the rate but there was a clause in our contract which permitted the union to question it. If they were not happy about it they could start it through their grievance procedure. The grievance procedure, the first two steps, didn't really amount to any importance as far as rates were concerned because the first step in the grievance procedure was between the foreman and the departmental committeeman.

Of course they were not sufficiently familiar with the rates and time study to be able to negotiate a grievance of that kind.

Then it proceeded to the second step which was between the departmental commiteeeman and the general

foreman. Here, again, those fellows were not sufficiently experienced or well informed to be able to negotiate a grievance.

Then we brought it to the third step which included the entire union negotiating committee plus the top management of the company. I was the top industrial relations man. I would sit in in those meetings with the industrial relations people.

We never made any secret -- we tried not to have any secrets between us and the union that was going to hurt anybody. We would lay all the cards on the table with respect to this particular time study and I know it was very unusual in the industry but we found that it worked. Most of the industry prior to the time they got their own time study men into the plants, prior to that time it was all a bilateral type of affair where the company made the time studies and more or less forced them through. In our case we made the time studies and when we had this third step grievance meeting the local internal representative attended those meetings in addition to the top local union people and we would give him all of the papers in connection with this time study and we would say "Take these papers. Here's a stop watch. If you don't have one you have this one. Go out to the operation and check it and see what you think."

In many cases he would come back and say I don't see anything wrong with the proposed rate, and we would settle it in that way.

In other cases they would not agree with us and we would go to arbitration. But there were not very many of them. We seemed to be able to work these things out in a fashion that saves a lot of work. It was more satisfactory to both sides.

I digressed from your original question. I don't even remember what your question was now.

MR. AUERBACH: That's fine.

Q Before May, 1963, did Mr. Heinrich or Mr. Clairmont ever tell you that job evaluation was an important thing and a necessity for the company before the contract proposals came out?

A Before the contract proposals came out I don't remember that they told me that it was, the job evaluation was. This came up very strongly and quite often when these company proposals were promulgated, but prior to that I don't recall their having told me that the job evaluation program was out of line.

THE COURT: Do I remember your earlier answer as having said prior to that you had not discussed the Working Agreement ~~arrangements~~ with him at all?

A That was pretty much the case. When Mr. Clairmont first got really active in the day-to-day operation, you might say, of the plant, as I think I previously stated, it seemed to be his prime desire to get these clauses that were just read here negotiated on pension fund and severance award clauses. During that period of time I don't recall our having discussed the working agreement details.

THE COURT: In any respect?

THE WITNESS: I don't recall them, no.

After those two items were more or less not closed but set aside, then it became time to start forming our proposals for the working agreement, and then of course there were discussions about the working agreement.

Q Did Mr. Clairmont or Mr. Heinrich ever ask you before the negotiations for the working agreement started, at any time from the time they came into the picture, did they ever say or ask you in form or substance "Mr. Conway, is there any way we can get a job evaluation program or have a company-wide job evaluation program without waiting for the termination of our current contract or working agreement"?

A I don't recall any. The big pitch came when we were getting the proposals together. I can't recall the job evaluation had becomeanything -- any job evaluation

discussion had become anything of great importance prior to that time because we were working, as I have explained, on job evaluation when the bubble broke.

Q Are you saying then that you were infact without any request from Mr. Clairmont or or order or whatever you will, from Mr. Clairmont --

THE COURT: He said he was working on it.

Q Did you feel you were working on it reasonably successfully?

A Yes, I did. As I explained, we only had one man handling that end of the thing as far back as ten. I hired that fellow way back, 1929, 1939, one time study man. I felt it was working. He probably didn't feel it was working fast enough, but we had about five or six industrial engineers working on this program at the time.

THE COURT: You said he didn't feel it was working fast enough. Who is he?

THE WITNESS: Mr. Clairmont. He was the one who brought up in May when we had these proposals, he was the one that brought up the fact he wanted a new job evaluation program.

THE COURT: My impression of Mr. Clairmont is he found very few things worked fast enough .

THE WITNESS: I am inclined to agree with you,

your Honor.

Q I would like you to look at pretrial order No. 32A and I call your attention to one particular statement by Mr. Clairmont. For the record and for the Court --

MR. AUERBACH: Your Honor, these are union minutes of the negotiating session, November 16, 1962, in the company conference room at which various union representatives were present and the company representatives were Clairmont, Garthwaite, and several others. This was in reference to pension and various other things.

Q I would like you, Mr. Conway, to pay attention to these particular statements which are not all the statements that Mr. Clairmont made but this:

The fund, reference is to the pension fund --

THE COURT: These are statements made by Mr. Clairmont to the union?

MR. AUERBACH: Correct. It is in regard to the various things they were discussing in the fall of 1962.

Q Mr. Clairmont said the fund will not be responsible for the benefits if the union causes a strike. And then a couple of lines down he says, I will say this: If there is a strike in 1963 I will immediately proceed to take steps to liquidate the business.

Mr. Conway, look at those minutes. Read as much

or as little as you wish, and tell me whether you recall that those were in substance statements made by Mr. Clairmont at that time.

A (Pause.) Yes, I remember this meeting. It starts out by quoting me saying "We all know why we are here. You fellows asked at our last meeting to have Mr. Clairmont present to answer some questions", and then Mr. Clairmont, I don't remember whether he read or spoke about this but it is a big, long report in these minutes.

THE COURT: You don't remember whether it was reading or extemporaneous?

THE WITNESS: That's right.

I do remember him making that statement about, and here again this is in November of '62, and I stated previously I began to get concerned around July of '62, because it looked to me like we might be heading for a strike. We had not started negotiations as yet on the working agreement, but at that time he made this statement, in other words, it scared not only me but a lot of people. He said the fund will not be responsible for the benefits if the union causes a strike.

And it also says, "I will say this if there is a strike in 1963 I will immediately proceed to take steps

to liquidate the business."

I was not nearly as scared as the rest of them because I was retiring anyhow.

THE COURT: What do you mean by that?

THE WITNESS: After a meeting of this kind our plant was not so large you didn't get a lot of feedback. You throw something out at a common meeting and then you would keep your ears close to the ground and see what kind of impression it made.

THE COURT: I take it that remark was intended to scare the union?

THE WITNESS: It did.

Q Mr. Conway, was this in your experience in labor relations the usual thing for a company to first bring up the word strike?

A Not as far as I know. I have never heard -- that's a bad word as far as management is concerned. It is not the usual thing for a company to make a statement like that. "If we have a strike we will liquidate." That's a very strong statement to make.

THE COURT: I remember Rockefeller Center made that statement about the Music Hall just a week ago. Seemed to have worked.

Q Mr. Conway, when this statement was made were there

any contract negotiations scheduled?

A I don't think so. This is November of '62.

Q Were you consulted in advance by Mr. Clairmont as to the advisability of making such statements?

A No. This statement was made -- I was present at that meeting and I heard it like the rest of them heard it, but I was not consulted in advance about making a statement of that kind.

THE COURT: Did you talk to him afterwards as far as you remember?

THE WITNESS: I don't remember, your Honor, whether I talked to him about it afterwards or not.

THE COURT: Any question I ask don't hesitate to state I don't remember.

THE WITNESS: I don't want to make up anything. I will try to give it to you the way I can remember it.

THE COURT: Sometimes witnesses think when the Judge asks a question they must have an answer.

A We used to have an engineer at one time, he always gave you an answer. It didn't make any difference whether he was right or wrong and that got us into a lot of trouble too. Lots of times he would give you the wrong answer.

Q Mr. Conway, were statements like that likely to ameliorate or deteriorate relations between the company

and the union?

MR. MOSS: I think, your Honor, that Mr. Conway ought to talk about the facts and not what he thinks is likely or unlikely. His opinion is nothing more than his opinion.

MR. AUERBACH: He is a labor relations expert.

THE COURT: I recognize that.

MR. MOSS: He has had some experience in labor relations. He has not been qualified as a labor relations expert.

THE COURT: I overrule the objection.

The objection is called to my attention.

A From my recollection of the scuttlebutt that came back to us after this meeting, as I say, we were close enough to the employees to have people tell us what they thought, as a rule, about a number of things that were brought up at these meetings, I would say that it served to incense the members rather than to ameliorate them.

In other words, I would say it actually scared them.

THE COURT: Scared them?

THE WITNESS: Scared them. I would assume that was his purpose in saying that.

THE WITNESS:

Probably it was.

MR. AUERBACH: Your Honor, there has been testimony first of all by Mr. Conway this morning about the literature, about Mr. Clairmont and his background. Of course, as your Honor may recall, Mr. Hess and others testified to a considerable extent on the first part of the trial, The question is, and Mr. Clairmont testified, he was doing everything in his power to convince the people. He says like I ran a plant for 20 years. I never had a strike or an arbitration. He claimed, his testimony was, he did everything that he could conceivably have to get the people to trust him and he said look, I'm not here to close out and I'm here to continue. Forget about what you read about me. I never had a strike or an arbitration.

I can see your Honor's point at certain times jsut before a union is going out the company may deem it a tactic after the union is threatening to strike to say okay you fellow, you go you don't come back.

That's not in this category I would like to point out because A, here he is trying his -- his statement is: I'm trying to pour oil on the troubled waters.

Secondly, the point I am trying to bring out, even in a case like the Rockefeller situation, they didn't talk strike six months ahead of time. They only made their

threat after the union brought up the strike. The essence of the point I am bringing out, as Mr. Conway says, union brings up strike. The company doesn't start talking about strike. If the company starts talking about strike with a knowledgeable experienced man like Mr. Clairmont, is he trying to make peace and harmony or trying to set them up for pushing them out or making them go out?

Q I would like to show you 126-A, Mr. Conway, which is the agreement --

MR. AUERBACH: Your Honor, this is with regard to the union agreeing to set aside the seniority provisions with regard to tire builders.

Q Do you recall this?

(Handing.)

A Yes, sir.

Q Did you regard the union's agreement to give super seniority to tire builders as a substantial concession by the union before contract time? This was not a trading period. This was just a giving something, is tha correct?

A Yes, sir. We did because we wanted this very badly. It was affecting our production in that we had plant-wide seniority and we had started some lay-offs and there were quite a number of employees with pretty good seniority bumping into the tire building classification. The result

was that we were not getting anywhere as near the production that we needed, that we could expect, because we had so many learners on the job that you don't learn to build a tire in a couple of days. It was really hurting us. We wanted this very badly.

In fact, it is the only one -- it is the one side agreement we wanted more than anything else as I recall because it was hurting our production too badly.

Q Tell the Court, please, what the problems are for a union in agreeing to a waiver of the seniority or bumping provisions or putting it the other way, giving super-seniority to one category? Is this something easy for a union to give?

A No, it is not. There are not very -- I have to say ten years ago there were not very many provisions like this in union contracts. There were a few but after all the union has to answer to all of its members and if they give away superseniority they are sure to get an unsatisfactory reaction from every employee who is affected by the fact that somebody else has been given superseniority over him, thereby cancelling his chances to get the particular job he would have if he were able to exercise plant-wide seniority.

I say it is, it is a tough one for unions to

get the membership to stomach.

THE COURT: There was a quibbling about definition. I thought this was not superseniority.

MR. AUERBACH: Key classifications. You give superseniority to a key job classification. They are referred to various ways.

THE COURT: I remember some witness saying this was not superseniority but key job classification. I don't remember what the difference was.

MR.MOSS: Mr. Garber testified that that is seniority given to certain union officials in maintaining their jobs. The key job classification was keeping people in special jobs.

THE COURT: This really is key job classification?

THE WITNESS: Yes, which exempts employees from being bumped out of a job really. That's what it amounts to.

We wanted to try to stabilize.

THE COURT: I understand. I remember the phraseology was different than that which you were using.

Q Mr. Conway, I am going to show you PTO90A which was the meeting between the company represented at that time according to these minutes by Mr. Clairmont and yourself,

and there were both representatives of the internal and the local union, as well as Mr. Barbu from Strong-Narovec. I would like to call to your attention Mr. Clairmont saying "Yes" --

MR. MOSS: Which page?

MR. AUERBACH: Page 5.

Subject to Mr. Moss' thinking I have misinterpreted something but without taking the time to read the whole thing, Mr. Clairmont was talking about pension. Mr. Burdon answered him, the internal president at that time, and he said each time you come you don't offer constructive prog ram. All you talk about is cutting at the employees' price.

Then he said at the top of page 5 I can understand where a company can come to a local union or the internal union and talk about putting the plant into a competitive position. I think we can talk about something like that. But this situation here is not the responsibility of the employee.

He winds up by saying are you willing to listen to this production sharing program? This is Mr. Burdon.

This is Clairmont:

"Yes. Our problem is not production. I did not say that the union is responsible. I am just asking for this to

make possible something that would not be possible otherwise. Those who are to blame are no longer with the company. I only wanted to know from you whether I can follow this course. We know what to do in the plant. We have no sales organization. We have not been able to pick up anybody to work in sales."

Q With refernece to that on page 5 and anything else that you want to look at, Mr. Conway, does that fairly represent to your recollection the statements that were made by Mr. Burdon at that time?

A It seems to be so from my recollection.

Q Was there anything said at that meeting by Mr. Clairmont that the people were not working hard enough?

A I don't recall. I have not seen all these minutes but I don't recall that there was anything about the employees not working hard enough.

Is that what you said?

Q Yes.

A I can't remember him saying that they're not working hard enough.

THE COURT: What do you remember him saying?

THE WITNESS: Well, at that time he was complaining about our costs being too high and of course the answer to that, as far as I was concerned, was that we were going

through this period of substantial lay-offs and naturally the costs had to be higher because the production flow was being hurt.

I don't remember him saying that the employees were not working hard enough. There, again, that is ten years ago, 11 years ago.

Q Mr. Conway, that last exhibit, that last meeting, that was on April 16th and that is when the company and the union made the agreement to hire Strong-Narovec.

I would like to now show you pretrial order 38. It is a letter dated April 18, 1963. It is to Mr. Hess, president of Local 227.

Dear Mr. Hess:

In accordance with the terms of our collective bargaining agreement dated June 30, 1961 and our amended agreement on supplemental unemployment benefits dated June 30, 1961, and with the terms of the federal labor management relations act, you are hereby notified that we desire to terminate said agreement as of midnight June 30, 1963. We offer to meet and confer with you for the purpose of negotiating new agreements to replace the two above mentioned agreements and we shall contact you in due course in order to establish a mutually convenient date for this agreement. And carbon copies were sent to the union and Messrs. Clairmont

and Heinrich and Conway on behalf of the company.

THE COURT: Who signed it?

MR. AUERBACH: A.A. Garthwaite, Jr.

Q In the first place, do you recall getting a copy of that letter?

A Yes, sir.

Q Were you consulted on the sending of that letter before it was sent?

A I don't believe so. I am not sure but I think Mr. Heinrich told me that he was going to get, I believe -- at this time Mr. Garthwaite was president of the corporation.

THE COURT: That' is what it says there.

THE WITNESS: To the best of my recollection I think Mr. Heinrich told me that he was going to get Mr. Garthwaite, Jr. to notify the union that we were going -- we wanted to meet and confer for the purpose of negotiating new agreements, and subsequently Mr. Heinrich did get Albert Jr. to send this letter to Mr. Hess on April 18th. I remember the letter distinctly because this was quite a departure from industry practice as far as I knew for the company to notify the union that they wanted to have this agreement renegotiated.

As a rule, and always, you are notified that

"We desire to terminate said agreement as of midnight June 30th," the reason why I remember it so well is I never had recalled any other company notifying the union to the effect they wanted to terminate agreements like this.

The union was the one that always had notified the company that they wanted to do this.

This was a departure to me that the company was notifying the union we wanted to terminate.

There again it brings into focus the point that I have raised several times: These things, all of these things, caused a lot of concern in my mind. We were doing things that were not orthodox as far as I was concerned. There was nothing wrong with it, understand.

THE COURT: Mr. Clairmont didn't impress me as an altogether orthodox operator.

Try to bring your mind back to this conversation you had with Mr. Heinrich when he told you he was going to do that.

Do you remember anything about that conversation?

THE WITNESS: No. In fact, I'm not sure it was Mr. Heinrich who told me. I think he did. I think it was him who told me -- I used to write these letters, but I never wrote a letter like this. The company then notified the union that we wanted to terminate, but whenever there was

a letter like this -- I don't mean this kind of letter, but whenever there was a communication between the president of the local union and the company, as a rule I would sign it.

THE COURT: I understand that.

If you have no recollection you have no recollection.

THE WITNESS: I can't say for sure that it was Mr. Heinrich who told me. But I think he told me that he was going to get Albert Jr. --

THE COURT: Did you say to him as far as you can remember that this was an unorthodox way of proceeding?

A I can't recall whether I said that to him or not. I cannot see anything wrong with doing it but it was a departure from the usual procedure. That's why, another thing that had me worried. Not for myself but for the employees. I could leave any time I wanted then. I had no contract or anything. In fact they could fire me too if they wanted to. Maybe they did want to do that sometimes.

Q Was the sending of such a letter particularly in the situation at that time with regard to Mr. Clairmont, was this likely to ameliorate or exacerbate the feelings of the union membership with regard to management?

A Well, it is only my own opinion. I don't know what the effect was on the union when they received this letter, but I would think that they would have felt it a very unusual kind of meeting especially in view of the fact that the first paragraph starts out with the fact that it is our desire to terminate these agreements.

Then we go on to meet and confer for the purpose of negotiating new agreements.

The stress there, as I interpret this letter, was that, No. 1, we want to terminate this agreement. Unless we can have a meeting of the minds on the new agreements that will replace these. I know what my reaction was. I have stated it.

THE COURT: You didn't get any feedback on this one as you did on the other, did you?

A I don't think so.

But then this was followed by the union's usual letter. This is Apirl 18th. I forget whether it required 60 days notice or what, but the union usually notified us of their desire to reopen negotiations prior to the expiration of 60 days. In this case the company notified the union on April 18th -- May, June -- that's 70 days. They want to give them plenty of time. Plenty of time to digest this.

Q In your experience does the union always send

that 60-day notice?

A Yes. Yes. As far as I know they always send a 60-day or whatever notice is required by their agreement. That is the usual practice.

THE COURT: Would this be a good time to break?

MR. AUERBACH: Yes, your Honor.

THE COURT: 2 o'clock, gentlemen.

(Luncheon recess.)

AFTERNOON SESSION

2:05 p.m.

J O S E P H J. C O N W A Y, resumed.

DIRECT EXAMINATIONCONTINUED

BY MR. AUERBACH:

Q Mr. Conway, you briefly mentioned the company proposals for the new working agreement this morning.

I hand you 98A.

THE COURT: Put in the record what you want.

MR. AUERBACH: This I will go into exhaustively, your Honor.

A Did you ask me a question?

MR. AUERBACH: No. The Court is looking for its copy.

THE COURT: I have it.

Thank you.

Q Mr. Conway, do you recognize that document?

A Yes, sir.

Q That is a kind of lengthy document. Did you prepare that?

A No, sir.

Q Was it shown to you before you were told to submit it and your comments asked on it?

A No. My comments were not asked for. I don't remember just exactly, as they would say at Watergate Westgate, in the point of time this was given to me, but I had not seen it very long, by matter of days, before the first day that we went in to meet with the union at which time I was to submit this as our proposals for negotiating a new working agreement.

Q Before you were given that did the company ask you to prepare any set of proposals of your own?

A No, sir, not proposals.

As I stated this morning, they -- I don't know who it was, Mr. Clairmont probably -- asked me to prepare this survey of clauses throughout the industry, which I prepared. But I was not asked to submit a list of proposals.

Q At any time before this was given to you, did either Mr. Clairmont or Mr. Heinrich ask you whether you had any success on how to improve relations between the company and the union?

A I don't recall that they did.

Q Did Mr. Clairmont ever say to you in words or substance "Mr. Conway, have you got any ideas on how to improve my image with the people?"

A I don't recall him making a statement like that, a question like that.

Q You said you don't remember exactly when you got these proposals?

A It was very close to the time when we were opening negotiations, but I can't say just when in point of time.

THE COURT: Less than a week?

THE WITNESS: Yes. I would say that.

THE COURT: More than a day?

THE WITNESS: It might have been the day before. I can't remember.

Q Would you look through those proposals and tell the Court what you think of those proposals, taking it any way you want in sum, as a whole, or by specific proposal?

A After I had an opportunity to go through them I was amazed. Frankly, I thought to propose a list of proposals to the union like this was ridiculous unless it was management's intention to withdraw most of them or to offer to back up on some of the proposals that had been included in this thing. The major item as I recall was the fact that management wanted to put into effect a general wage reduction amounting to 25 per cent. This particular propsal was being made at the same time as the industry, the tire industry, had just granted an 8 cent per hour wage increase, so, in effect, I don't remember what our plant average earnings were at the time, but I would assume they were

probably somewheres around $2.50 or $2.60, so if you take this 25 per cent reduction in wages which is proposed in here and apply that to your average earnings of somewheres around 2.50, 2.60, you are asking your employees to take a wage cut of 50 or 60 cents an hour while at the sametime all the other employees in the industry were receiving an increase of 8 cents per hours.

I felt after I went through some of these proposals, such as this one on management's rights which is Section 1817.1 of the proposals --

THE COURT: What page?

A 39, your Honor.

I could not help but feel when I read that that considering the fact that we were after a 25 per cent wage reduction and considering the fact that we wanted to adopt a so-called management's rights ~~production~~ protection clause such as this incorporated, I could not help but feel again that it looked to me like Mr. Clairmont was trying to force the people to go out on strike. Nobody could be expected to accept things like this. Of course I realize that this is a first proposal, but then when you go down the line and see what the company later on agreed to revise or in a few sections to drop, you realize that, well -- here again I was very much concerned unless it was Mr. Clairmont's intention to

drop a lot of these things completely or revise them substantially. But in the case of the 25 per cent wage reduction, the company never backed off of that until the day that the new working rules were proposed, the day of the strike, when the company revised the proposal to a 25 per cent wage reduction.

There, again, even 20 per cent represented at least 50 cents an hour reduction in the employees pay as against an eight cents an hour increase that the rest of the industry was getting.

When I saw that it indicated to me that there was really no sincerity in trying to negotiate a proper wage level when the final working rules still incorporated a 25 per cent wage reduction.

Of course, as soon as the union saw the latest work rules that is when they took a vote of their executive committee and decided to strike. When you go through some of these clauses -- frankly, I thought they were ridiculous. I have seen enough union contracts, I have seen enough proposals of other companies, but I have never seen anything like the 36 pages of union proposals. That is what caused so much concern on my part: "The only thing it must mean is that we are due for a strike."

THE COURT: At or about the time these things

were givento you, do you remember discussing these thoughts with either Mr. Clairmont or Mr. Heinrich?

A They were discussed, yes.

Q What do you remember being said?

A There was very little -- I wouldn't say very little done -- but the items that were most important were not revised very substantially. This wage program, of course, was a very objectionable one; and the job evaluation program, that was proposed originally, that did not give the union a chance to take any rates to arbitration. It was a unilateral type of proposal where the union didn't have an opportunity --

THE COURT: I understand that.

You thought, as you just said, this would precipitate a strike. Did you say that to either Mr. Heinrich or Mr. Clairmont?

A I can't recall, but I would not be surprised. I might have mentioned the fact.

THE COURT: Do you have any recollection what they may have said to you if you said that to them?

A Well, the only recollection I have in that regard is that I got the impression -- I was told, I don't remember by whom, either Mr. Clairmont or Mr. Heinrich, I suppose, that we were going to sit down and propose new

set of work rules and we were going to propose them to the union and we were going to stick to them. There was not going to be any further withdrawal of any proposals. When we got that I saw immediately that the 23 (25) per cent wage reduction had been changed to 25 (20) per cent and an attempt was made to soften up the job evaluation proposal; however, it still didn't give the union the opportunity to partake on a joint basis, and it was not in line with what the industry was doing.

THE COURT: Do you remember any conversations with either of those two gentlemen as to what would happen if they struck, how long the strike would be, or anything like that?

THE WITNESS: No. I don't remember anything about if they struck what would happen.

THE COURT: You don't remember any such conversation?

THE WITNESS: No.

Q Mr. Conway, I believe there was one section there that calls for eliminating a holiday. Would that have saved the company very much money?

A From the overall picture, no, but, of course, that was tied in with the proposed decrease in vaction payments and other so-called fringe benefits that would have brought the Lee fringe benefits down below the level of other

industry employees. We always prior to that tried to stay in line with the industry practices.

Q Would it be fair to say then that these were additional cuts in compensation?

A It would boil down to that.

Q Is it usual for companies to propose eliminating holidays, cutting down on vacations, and things like that?

A No, sir.

Q Do you ever recall it being done anywhere else?

A No. I don't know. The union usually used to come in every time you had a new contract being negotiated, they used to come in for another paid holiday. That is the shoe on the other foot. But the company as a whole would try to hold the line rather than grant another paid holiday but it seemed to be the trend that every time you negotiated a new contract you gave another paid holiday, the trend in the industry.

Q What effect does making a proposal by the company to cut a holiday, cut vacations, what is the normal result or what would be the expected result that it would have on the people?

A Well, there, again, naturally the employees would resent it because they were asking -- they were being asked to do something that was not being done in the industry,

and in those two cases, paid holidays and vacations, they were just about the same as the entire industry, so the impression on the employees would be very unfavorable. Well, I can't say too much. I have already said what the impression was on me.

Q I wonder if you would come back for a moment to the management rights clause. If you could look at it for a moment, tell the Court why this would be outrageous to ask for.

A Well, I understand I am not a union man but if the union were to agree to a clause to a clause to that there wouldn't be much use in having a union. They would be giving away nearly all their rights.

I have never seen or heard of such a clause like that in any other contract regardless of whether it is in the tire industry or any other industry.

There again it looked like an attempt to me, if this could be shoved down their throats, to close the plant down if they were not going to accept it.

Q I would like to get on to another phase. You started negotiations; is that correct?

A Yes, sir.

Q Did the company outside of shifting the work pay from 25 per cent to 20 per cent, did the company ever

back off on the real heavy stuff?

A The real heavy stuff as I said was the wages and the job evaluation program. They were the two, I would say, major items that would have had the most impact.

Q When we talk about job evaluation program, Mr. Conway, was the company's proposal for a job evaluation program similar to what you were already doing? You testified this morning you were embarked on a job evaluation program?

A It was similar but the way I under what Mr. Clairmont wanted, he wanted to throw out the whole program that we were working on and start over again and get an industrial engineering firm to come in and make a complete job evaluation revision in the job evaluation program.

We, as I stated this morning, felt we were already doing that to a certain extent. We didn't go out and hire an industrial engineer from the outside. We hired employees on our own payroll and we had five or six of them working on a job evaluation program which eventually would have come out with it about the same thing that he was trying to propose, I believe, except that he wanted to do it on the basis that -- with the least amount of disruption throughout the plant operations, and we

were doing it.

As I say, I think this fellow Rudderow, who was in charge of the industrial relations section, I think he was there about five years when--

Q You mean industrial engineering?

A Yes, when he was laid off.

We had started this program about five years ago and we were working on it with these--

Q The proposal that Mr. Clairmont made, was that for bilateral.

A No.

THE COURT:, We have had all this.

THE WITNESS: The proposal in here does not give the Union the right to aggrieve any kind of a rate. It was revised in the latest work rules of July 18, but it still would not have become a bilateral program.

THE COURT: Did you have anything to do with formulating those revised rules you just mentioned, July 18?

THE WITNESS: I don't think so. I'm not sure. I don't think I did. I think they came from Mr. Clairmont and he also--he had a man in his office by the name of Harry Schick, and he had gotten in some of this.

THE COURT: Who is Mr. Schick? I didn't hear his name before.

A Well, Mr. Heinrich knows better than I do. He worked in Mr. Clairmont's office in New York. I don't know what his position was. I think he was more of a financial man than anything else.

He got into--

THE COURT: He was not on the spot at the plant?

THE WITNESS: No. No. He was located here in New York in Mr. Clairmont's office, but when these negotiations, after they had started, he was helping Mr. Schick--Mr. Clairmont rather, to formulate some of this stuff.

THE COURT: You never talked to Mr. Schick?

THE WITNESS: Yes.

THE COURT: You did?

THE WITNESS: Yes. Mr. Schick would come over occasionally and he would offer proposals that they intended to make.

THE COURT: Did you ever talk to Mr. Schick and express the views you expressed here as to these proposals, that they would precipitate a strike?

THE WITNESS: I imagine I did.

I felt it easier to talk to Mr. Schick than I did feel in talking to Mr. Clairmont. I could express myself better with Mr. Schick than otherwise.

THE COURT: He was not quite as high powered?

A No. He was more down to my level.

THE COURT: Did you ever remember any conversations with Mr. Schick about the possibilities of a strike, how long it would last?

THE WITNESS: I probably did. I don't remember. I can't say definitely. I probably mentioned that and I think the reason I brought his name up, you asked about the formulation of this last set of working rules, I think that Mr. Schick participated with Mr. Clairmont in writing those July 18 working rules, but I'm not certain of that.

THE COURT: You can't remember any specific conversations you ever had with Mr. Schick?

THE WITNESS: Not specific.

THE COURT: Or in general?

THE WITNESS: No.

He was easier to talk to than Mr. Clairmont was.

THE COURT: I'm trying to refresh your recollection, any time you talked to Mr. Schick about the coming strike, or the fears you expressed here.

THE WITNESS: I think I probably did with him.

THE COURT: But you can't remember when?

THE WITNESS: No.

Q Mr. Conway, I would like to ask you this.

You have heard of the tread tuber. I would like to show you Exhibit 125A.

MR. AUERBACH: That's the letter of authorization. That came in in Mr. Heinrich's testimony, your Honor.

Q Did you ever see that exhibit or that copy of a letter, Mr. Conway, before you saw it recently in my office?

A No, I didn't see it.

Q Were you ever told--

A I didn't receive a copy of this.

Of course being in the other department, the Personnel and Labor Relations Department, this had to do with a capital expenditure and I would not ordinarily receive a copy of a letter like this.

Q Did anybody during the course of the negotiations from management tell you that the company or Mr. Clairmont had authorized spending this 200 some odd thousand for parts for the tread tuber?

A I cannot recall that anybody ever mentioned it, this particular item at all.

Q To you I'm talking about.

A To me?

Q Had you been informed of this, either by receiving a copy or being told about it, would you have remembered telling people during the negotiations about it?

A I think I would have because there was already some fears in the minds of the union and the other employees about the future of the plant.

It seems to me that when the management decided to spend something over $200,000 for the installation of this piece of equipment, had I been told that it was their intention to order all of this stuff, I think even though I had not been told to bring it up with the union, there wouldn't have been any secret about it and I think I would have used that in my discussions with the union as a point to say, "Well, now, look, this demonstrates Mr. Clairmont's good faith in trying to do what he can to keep this plant operating because he's going ahead and spending a couple of hundred thousand dollars for a piece of equipment. The chances are if he were going to liquidate the plant I don't think he would be spending that kind of money, because it was not brought up.

I was not instructed to bring this up at a meeting, and from what I recall, I didn't even remember, I didn't know, I don't think, that those expenditures had been authorized at that time.

There is another thing.

When we started to get near the deadline, along that time, it seems to me that--I'm getting confused as to

what I was going to say. There was a point I wanted to bring out here.

Yes. This letter states that it is expected that this equipment and this accessory equipment would be in production by July--availability of this equipment for production is scheduled for July 1963.

If that were the case it seems to me that we could have told the union, don't disrupt anything now because all of the crying that the company has been doing about short treads and inefficient operation of the tuber should be corrected in the month following the expiration of the contract.

Therefore we should not have this problem. This appeared, it seems to me, from what I have been told, in the prior hearing, that some people seemed to feel this was a very major point; but the fact that we were going to correct it, according to this, the following month, changed, it seemed to me, the aspect of the importance of this great big piece of equipment except from the standpoint that we are spending 200 some thousand dollars and we would not be spending that if we were going to close the plant down on July 16.

It does not make sense to me.

THE COURT: I take it you were not on the Execu-

tive Committee any more.

A We didn't have any then.

Q Could you have used in your report this information as a bargaining tool in the negotiations?

A Oh, yes. I would have. I would have had I known it. I think in a case like that I would have done it even though I had not been instructed to do it. I was grasping for everything I possibly could to try to save this thing from the way the Union used to say "going down the drain."

Q In the negotiations with regard to job evaluation did the union ever indicate that they would not go along with some reasonable bilateral job evaluation program?

A I don't think they did. What they insisted on was their joint participation. In fact, we had already started that before Mr. Clairmont entered the picture. We had agreed with the union to permit the union to have their own time study man come in and perform time studies on their own, especially any rates that were in dispute we had, I can think, as many as two union men, they were local union men, who we were training and the union had sent, I think they sent them to Pittsburgh, to be trained in time study because the International had a so-called expert time study man located in Pittsburgh. It might have been Kalamazoo but

I think it was Pittsburgh.

We had already gone that far as to have one or two local union men conducting time study. That would have been part of the entire job evaluation program. Had we continued that they would be going right along with our people.

Q What happened with the job evaluation program? Did the company change? Did you get orders on that?

A When?

Q During the negotiation?

A I don't remember. I don't understand your question.

Q Did you ever get the okay from Mr. Clairmont or Mr. Heinrich to work out some sort of bilateral job evaluation program?

A No. I don't believe so. We didn't. If I had been instructed to do it I would have had it started but we didn't work out any bilateral program. We were still trying to negotiate this clause and as far as--as long as that clause contained the provision that the union did not have the right to aggrieve a rate we could not get anywheres.

THE COURT: Did they discuss ~~discussion~~ with you, either Mr. Schick or Mr. Heinrich or Mr. Clairmont, possible

variations?

THE WITNESS: I don't believe so. I can't remember that that was discussed. We had, as I understand it, our own job evaluation program going. But at that particular time I can't recall that I was ever instructed to try to do anything with respect to the job evaluation program except to try to ~~negotiation~~ negotiate a proposal, and we didn't get that negotiated.

MR. AUERBACH: Your Honor, I turn now to Exhibit 44, the work rules.

Q Mr. Conway, you have already referred to the work rules. You have already been asked some questions. I would like to ask you these questions so we have it clear.

Did you prepare those work rules?

A No, sir.

Q Were you asked for any suggestions as to such work rules?

A I don't recall having been asked for any.

Q Before you say those work rules, did Mr. Clairmont or Mr. Heinrich ever ask you in words or substance, "Mr. Conway, can you give us any ideas as to how we could get these negotiations off dead center?"

A No. I'm quite sure that I was never asked anything like that.

Q Were you ever asked, in words or in substance, by Mr. Clairmont or Mr. Heinrich, "Do you have any ideas, Mr. Conway, as to how we could avoid a strike?"

A I don't believe so.

Q When for the first time did you see these work rules, if you remember?

A I don't remember exactly but I'm pretty sure they were not in existence very long before July 16.

July 16 was the date on which we held our final negotiation meeting with the local union prior to the strike. It does not matter, but I was going to say I think it was a Monday, but I don't remember.

These work rules were prepared not long before the July 16 meeting. I don't know exactly when it was. I can't say just when I saw them but, for instance, if July 16 was aMonday I may have seen them not earlier than the previous Friday or I may have seen--I might have seen them on the Monday morning of the afternoon of the meeting I spoke of, that meeting started at 1 o'clockin the afternoon.

Q Do you recall who gave them to you?

A I think Mr. Heinrich gave them to me.

THE COURT: Do you have any conversation with Mr. Heinrich about that time?

A Mr. Heinrich--I'm not sure it was Mr. Heinrich but

if you let me assume that it was I think he probably told me that we have got--

MR. MOSS: I object to the assumption. If he does not remember, to let him assume that something is so and describe a conversation he must have had if he ever had one is clearly objectionable.

THE WITNESS: Start your question over.

THE COURT: It is purely speculative.

THE WITNESS: Your Honor, it is easier for me to change the wording I just made. I can leave the word-- I think Mr. Heinrich gave me these rules. I think he said "This is going to be it. We are going to start and have the plant open"--they went out on the 16 and this was to be effective July 18. "We are going to have the plant open July 18 and we will work under these rules."

I think that's what happened.

THE COURT: What did you say, if anything?

THE WITNESS: I think I said all right, if that's the way you want it that's the way it will be.

THE COURT: Do you remember any discussions?

THE WITNESS: There was not much of a discussion. I think the instructions with respect to these were coming from the top man and I don't suppose Mr. Heinrich or I had too much to say about them after that because we were taking instructions from the top.

THE COURT: Do you remember any discussions you shared?

THE WITNESS: No.

BY MR. AUERBACH:

Q Would you tell us, Mr. Conway, what you expected to happen when the union got these work rules?

A I did not expect that the union would accept the, however, I followed instructions and I presented them, and we read them over.

THE COURT: Who is we?

THE WITNESS: The entire Negotiating Committee. I don't remember who else was there representing the company besides myself, but after we read them over the union expressed their dissatisfaction with them and the local president, Mr. Hess, stated that they would like to adjourn the meeting and go back to the union hall and present this to this--the working rules--to the Executive Committee who were sitting in session at the union hall.

So we adjourned--you want the whole story?

THE COURT: Yes.

THE WITNESS: So we adjourned. The union fellows went up to the union hall, and, as I recall, I received a phone call from Mr. Hess. The company's people were still waiting--no, I think we had gone to my office. They were

still waiting in my office when Mr. Hess called and stated that the Union was rejecting this new set of work rules. They would not work under them. But if the company wanted to have a change of heart they would continue to work on the basis of the old agreement.

As I recall, I went into Mr. Heinrich and gave him the message ~~me the meeting~~ and Mr. Heinrich stated that we could not tolerate working under the basis of the old agreement and that would be my answer to the union.

I called Mr. Hess back at the union headquarters and he said then we are on strike.

There was one other attempt in there.

THE COURT: This is on July 18?

MR. AUERBACH: Yes, your Honor.

THE COURT: What happened on July 16?

THE WITNESS: These working conditions were to become effective on July 18.

THE COURT: So this was July 16?

THE WITNESS: That's when the meeting was, yes.

BY MR. AUERBACH:

Q Mr. Conway, in your opinion was there any substantial possibility that any union could accept those working rules?

A I don't think so.

First of all you have that 20 per cent wage reduction- ~~construction~~.

You have this job evaluation program which really stymies itself in the last paragraph which states "In case of grievances resulting from the implementation of the job evaluation program the company intends to consult a reputable competent independent industrial engineering firm and should be guided by its recommendations in connection with the subject of such grievances.

This states the company intended to do that and should be guided by the recommendations of an outside industrial engineering firm, but the union is not made a party to this at all and I don't think it would be acceptable to any union.

Q Was there any right to arbitration under any of those work rules?

THE COURT: I can read it myself.

Q Was there anything else you felt was impossible from a union's point of view?

A Well, we had this matter of key jobs. This proposal included not only tire builders but tire builder calendar operator tuber operator, dipper operator, builder, the company sort to get this so-called super seniority for all of those jobs. It would be very unusual for the union

to have accepted that. However, in fairness they might have tried it out for a while, I think, to see how it might have gone, but they didn't accept it.

The other items are not a matter, to me, of great importance. Here this Easter Monday should be eliminated as a paid holiday. The vacation period, I believe, I don't know if it's ever been mentioned, but there was an attempt on the part of the company to reduce the employees vacation pay by taking vacation pay on the basis of two per cent of the employees straight time earnings.

The usual procedure in the industry was two per cent of their average gross earnings and not their straight time earnings.

The big thing here was the wages and the job evaluation. They were the two hard roadblocks. Even if we had given in on everything else I don't think the union would have accepted this.

Q The union went out on strike. You continued to meet with the union?

A YEs.

Q After the strike started, did Mr. Heinrich or Mr. Clairmont ever ask you in words or in substance "Have you got any ideas Joe Conway on how to end the strike?"

A I don't recall that either one of them ever asked

me such a question.

THE COURT: Taking Mr. Heinrich and Mr. Clairmont and throwing in Mr. Schick, did you ever discuss with any of those three gentlemen, either individually or jointly or any other way, the problem of ending the strike?

A No, your Honor. I don't recall having ever discussed it.

I would like to correct--not correct but I would like to mention one point:

You mentioned Mr. Clairmont and Mr. Heinrich and Mr. Schick all in one breath.

Mr. Schick was not actually calling any shots. Mr. Heinrich and Mr. Clairmont were the two top men and Mr. Schick was more or less assistant.

I don't think we should get the three gentlemen in the same category because Mr. Schick, I don't think he had any authority as far as--Mr. Heinrich--Mr. Heinrich' was Mr. Clairmont's representative Conshohocken. Mr. Heinrich was the big shot in Conshohocken.

THE COURT: Mr. Schick was working?

THE WITNESS: Yes, he was working.

THE COURT: I want to know whether you talked to Mr. Schick about any of these problems?

THE WITNESS: I probably discussed them.

Q Do you have any recollection of those discussions?

A No, I don't. I can't remember the substance of any discussions. Had I, they might not have teen transmitted--

THE COURT: You have no way of knowing what is transmitted?

A No.

THE COURT: I assume you took no memoranda of any of these discussions?

THE WITNESS: No. I don't know what happened to all of my records. I had all the minutes of our meetings and so forth. I had paper that probably would have been enlightening to this case at hand, but when I left the company I didn't take anything with me at all. Everything that I'm stating here is strictly from memory.

BY MR. AUERBACH:

Q Mr. Conway, in regard to Mr. Schick, did he have anything to do with making policy for the company?

A No. I'm quite sure he didn't. He was just an emissary.

THE COURT: You have told us what he was.

Q Did the company from the time that the strike started ever modify in any substantial way the time of July 15 until you left in February, 1964? Did they make any substantial changes in its position?

A I don't believe so. I can't remember any. We had a meeting. I think it was called by the Federal Mediation Service. The director of the Philadelphia Region attended that meeting together with the mediator who was trying to mediate our situation.

I think at that meeting Mr. Clairmont read a statement of some kind but I don't believe there was anything in the statement to indicate that there was any intention or request on the part of the company to change its position.

That, as I say, is all from memory and I'm not even sure there was a statement read from but I think he did. I think he read a statement.

Q Mr. Conway, the Court has asked you on several different occasions whether you made any suggestion to Mr. Clairmont or Mr. Heinrich. If you had felt though they might be interestedin listening to you--

THE COURT: Don't ask him that way.

Q If you feel they would be interested in your opinion?

A Not at that time. I felt it was pretty much a closed issue as far as the operation of that plant was concerned by the present administration. There were already occasions, information, or rumors that the manage-

ment was trying to interest somebody else, trying to sell the plant to somebody else, I think there were also rumors that they were trying to sell some of the equipment to somebody else.

But as far as I am concerned they were only rumors and I don't know for a fact what was being done about the plant. I am practically sure that there was not anything being done with respect to an attempt to get it reopened by the then present management.

MR. MOSS: Can the witness, fix a time. Mr. Auerbach didn't fix a time as to the question he was asked.

MR. AUERBACH: The entire period before the strike started and after. That's what it covered. I'll ask it specifically.

THE COURT: I think I will have to strike about the rumors.

Q Mr. Conway when you were given the company's proposals before the first meeting of the union, the negotiations--

THE COURT: You are not talking about 44?

MR. AUERBACH: No.

THE WITNESS: The big one is 98A.

Q When you got that set of proposals, did you feel that youcould change Mr. Clairmont's mind on those

proposals?

A That I could change Mr. Clairmont's mind? No if you know Mr. Clairmont like I learned to know him you would know that you don't change Mr. Clairmont's mind very much.

Q On July 16 when you got work rules, did you feel that you might be able to change Mr. Clairmont's mind on those work rules?

A No. I felt he had his mind already made up. By that time I felt that he was intent on closing down the plant.

Q You mentioned this morning that after July 16, the weeks after that, you got instruction--

THE COURT: In fairness to Mr. Moss, I'll note the witness' ~~opions~~ opinions are subject to your objections.

MR. MOSS: So much of this has been coming in I decided not to object. I ~~understand~~ understood you were going to allow him to testify to anything, so I allowed him to testify to anything. His opinion is only valid as supported by objective facts.

THE COURT: My only observation is this: I don't go along with you on his method of expression. The witness is talking about something ten years ago. He says it might have happened, I assume it happened. I take that as a

layman's way of saying "That's my best recollection at present." If you want a continuing objection for the record, all right.

On the question of his opinion as to Mr. Clairmont or Mr. Heinrich's contentions or views, you don't have to get up every time he says it but I would like the record to show that you have an objection.

Whatever decision is made here you have a continuing objection to that type of testimony.

MR. AUERBACH: On that objection, your Honor, I would like to point out the validity of his testimony.

I think we qualified, or Mr. Conway qualified, as a specialist--

THE COURT: He didn't qualify as a specialist on Mr. Heinrich's and Mr. Clairmont's emotional processes.

MR. AUERBACH: I think he qualified as an expert in labor relations, certainly labor relations in this industry. I think as Mr. Moss said in making his objection, his opinion doesn't mean anything unless it is backed up by objective facts.

THE COURT: I don't think his opinion is as to Mr. Heinrich's and Mr. Clairmonth's (CLAIRMONT'S) subjective views unless backed up by statements.

I don't want to interrupt the witness and stultify

his testimony.

THE WITNESS: This is the first time I have ever been a witness, your Honor. One of our employees was being sued for non-support and his wife subpoenaed me to testify for him, but that was a lot easier than sitting here all day and having these questions shot at me.

THE COURT: Prentend you are home talking to your own wife.

THE WITNESS: I'm trying to answer as honestly as I know how.

THE COURT: Don't worry whether your answers fit in the legal rules ornot. That's my province.

MR. MOSS: I would not like my silence be interpreted to suggest that I agree Mr. Auerbach has qualified Mr. Conway as an expert in anything except that he had conducted for many years the labor relations for the Lee Rubber Company.

THE COURT: I'm inclined to think that that qualifies him.

Q I think I was asking about the layoffs of the salaried, the non-union people. How extensive was that?

A That was quite extensive. As time went on it became more and more substantial. We started out--I don't know when we started laying--you asked me about salaried employees.

Q The non-union people.

A We started laying off non-union employees a short while after the strike began. I don't believe we immediately went July 16th and on the 17th we started laying off. I don't believe that. But, naturally, as the paper work and everything else decreased, we had a full complement of office workers and non-union people there, and it became a regular routine for me to receive a list of people every Friday afternoon who I was supposed to notify that afternoon that they were being let go as of that day.

So that was one of the jobs that I had to perform during the period of the shutdown following the strike. We were laying non-union people off every Friday for a good period of time until it got down to the point where we needed what was left. But that was not very many.

Q Did any of your top people go, like Barkett?

A Practically all of the top people went. You mention Barkett. I think he left before I left. I think he left in the wintertime, maybe December or January. December of '63 or January of '64.

THE COURT: Refresh my recollection as to Mr. Barkett.

MR. AUERBACH: He was the manufacturing manager.

THE COURT: Is he the man --

MR. AUERBACH: He's the man that Mr. Clairmont brought in.

A Whether or not they quit or were laid off I can't state, but I can mention the research and development man, a fellow by ths name of Chuck Wyman who came to us from Dayton Rubber, I believe, and Mr. Velock who was a factory superintendent under Barkett. He left. I don't know where he went. He might have gone back to Firestone. He had come from Firestone.

Q Do you remember when he left?

A No.

THE COURT: There must be records.

A It had to be sometime during the fall of '63 or the early part of '64 because all of those key people, another fellow by the name of Wayne Allen who had come from Firestone, he's now a factory manager for Schenuit Rubber in Baltimore. He left along the end of '63.

There was a fellow who was controller or assistant controller, by the name of Fluri. He left and he's now with -- he has a big job with Schenuit Rubber in Baltimore, and the former -- I believe he was treasurer before he left, a fellow by the name of Falconiero. He left. I'm not sure. I'm not sure when he left.

By the time I left, most of the key people were

gone.

Q Did you have any knowledge of Mr. Heinrich or Mr. Clairmont trying to keep these key people on?

A I would not have any knowledge of that.

THE COURT: How would he know that?

MR. AUERBACH: He was personnel director. He testified his office covered all personnel. He was given the list, in fact, of people --

THE COURT: You had nothing to do with hiring these key people, did you?

THE WITNESS: I took part in the interviews of some of them. Not Barkett, but I helped. I assisted in interviewing Velock and Allen. I believe Fluri.

When you got up to that level, it was not an exclusive job of mine to interview people like that. You always -- in the old days, the president was in on your interview, also.

THE COURT: Do you have any knowlege, one way or the other, as to the discussions these people had with Mr. Heinrich or Mr. Clairmont about leaving?

THE WITNESS: No. I don't recall having sat in between these people and Mr. Heinrich --

Q Did Mr. Heinrich or Mr. Clairmont ever ask you to try to hold onto any of these people?

A No.

MR. AUERBACH: I would like to point out the significance of this, your Honor.

We have Mr. Clairmont testify, up to the very end, he was trying in the worst way to get the thing going again.

THE COURT: The context of the situation he is describing, it's immaterial on that issue in my view. My view is the only one that counts around here.

Let's take a five-minute break.

(Recess.)

MR. AUERBACH: I have no further questions.

THE COURT: I can go until ten past 4:00, Mr. Moss.

MR. MOSS: I have one subject. If I may, I would like to defer my cross-examination until tomorrow except for one point that I feel is very important to clear up.

THE COURT: How long will that take?

MR. MOSS: About five minutes.

CROSS-EXAMINATION

BY MR. MOSS:

Q Did you come to my office yesterday morning to talk with me before you testified?

A Yes. You requested me to do that.

Q Yes, I did.

You came about 10:00 o'clock?

A Yes, sir.

Q You left about 12:30?

A Yes. I guess it was around 12:30.

Q You left my office to go to Mr. Auerbach's office, did you not?

A Right.

He also requested me to come there for an interview.

THE COURT: I wrote an opinion. I urged you to talk to both of them.

THE WITNESS: I complied with your request yesterday.

Q You talked with Mr. Auerbach about your testimony in this case before you met with me yesterday, did you not?

A Yes.

Q Had you discussed the tread tuber with him before you talked with me yesterday?

A Yes. I think I did. Not in great detail, but I think I did. I think he asked me.

I'm offering this voluntarily. I believe he asked me if the tread tuber was an important part of the

negotiations and if I were instructed to bring out the fact that the company was going to spend this amount of money.

Q Do you tell us you discussed that with him before you talked to me yesterday?

A Yes, sir.

Q My colleague, Mr. Briton, and Mr. Heinrich were with us yesterday, were they not?

A Yes.

Q Did we discuss the tread tuber with you yesterday?

A Yes, sir.

Q Did we ask you whether or not you had used it as a bargaining tool in the course of the negotiations?

A Yes, sir.

Q Did you say you had not?

A Yes, sir.

Q Did we ask you why you had not done so?

A I guess you did.

Go ahead with your next question.

Q What did you say?

A At the time --

Q Tell me what you said, please.

A What I said yesterday?

Q Yes.

A I said I didn't think it was of any great importance, so far as the negotiations were concerned.

Q Before we talked about the tread tuber, didn't we discuss the fact as to whether the tread tuber had first been ordered in the spring of 1962?

A I didn't catch that.

Stand still and ask me the question, please. I only got part of your question.

Q When we were talking about the tread tuber yesterday, did you and we, the three or four of us, not discuss the fact that to your recollection the tread tuber had first been ordered, the new tread tuber had first been ordered by the company May or June of '62?

A I don't know about that date.

Q Didn't we discuss that yesterday?

A When the new tread tuber was ordered?

Q Yes.

A I don't remember discussing the date that the tread tuber was ordered.

Q We discussed the fact that the tread tuber was around in the early part of 1963, did we not?

A Yes, sir.

Q Did we not discuss the fact that the company had appropriated some more money to complete the tread

tuber?

A Yes.

Q Didn't we discuss the fact as to whether you did or did not know whether the material that they had ordered was expected to arrive sometime later because it had to be specially ordered?

A I don't recall you asking me or whether I did or did not know that this so-called accessory equipment had been ordered.

Q Didn't you tell us that, as you recalled it, it was received sometime after the strike began?

A Did I tell you --

Q That the new material --

A -- that this was received?

Q By the company.

A I did not.

Q Didn't you discuss with Mr. Heinrich the fact that the company had cleared some space in the plant to install the new tread tuber?

A Mr. Heinrich said that.

Q Didn't you agree that you recalled that, the big space that was left there for the tread tuber?

A He made a statement. I didn't think it was up to me to agree or disagree with the statement.

Q Your testimony is now that you didn't say, "Oh, yes, I remember the space that was developed there"? That is your story now?

A That's right.

Q Didn't you say when we asked you why the tread tuber had not been used as a negotiating tool, didn't you tell us it had not been used as a negotiating tool because it had nothing to do with the negotiations?

A As far as I was concerned, it didn't.

Q Didn't you slap your thigh like that, and say that was just nothing. It didn't amount to anything. It was like a tube of toothpaste that you put something in the top and it comes out at the bottom. Didn't you say that?

A No. I didn't say that. I didn't slap my thigh, in the first place, and I didn't say that. I did say that I didn't consider the fact that we had this piece of equipment that could be installed had any great bearing upon our negotiations.

Q Didn't you say that it occupied, at most, maybe two people?

A No. I didn't say two people. I don't know how -- what did you say about two people?

Q Didn't you tell us yesterday that the tread

tuber probably occupied about two people to run the machine?

A No. I know better than that.

Q You are saying now, here, that you didn't say that it was just like a tube of toothpaste -- or meat grinder, excuse me.

A I said it was like a meat grinder.

Q You fed the rubber in the front and it came out the end, and that was all there was to it?

A I didn't say that's all there was to it. I tried to give you the picture of what this piece of equipment was, and I said it's similar to a meat grinder where you put the rubber in and it comes out preformed tread, but I didn't say that it was all there was to it.

Q You said, did you not, that it had nothing whatever to do with the negotiations, and if you had even thought of it, you would not have mentioned it in the negotiations?

A No, sir. I didn't say that.

MR. MOSS: Thank you.

Your Honor, may I resume tomorrow, please?

THE COURT: Try to tell me what you did say about that yesterday in Mr. Moss' office, where you came substantially at my request.

THE WITNESS: Mr. Moss and Mr. Heinrich brought

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up this matter of the tread tuber. We discussed it more or less in general.

THE COURT: Try to remember everything that was said on that subject, who said what first.

THE WITNESS: I don't know who said what first. I guess it was Mr. Moss, because he was doing the interviewing.

THE COURT: Let's get back to that.

Withdraw my question. We're back in Mr. Moss' office; right?

THE WITNESS: Yes, sir.

THE COURT: Where is that, to orient myself? Where is his firm?

THE WITNESS: It's 777 Third Avenue. It's in the U.S. Plywood Building. I don't know the name of his firm. He has a firm about so long and I can only remember a couple -- Poletti, I can remember, and somebody else. I don't remember the name. It's the 22nd floor. 777 Third Avenue. That's pretty good memory, now, isn't it?

THE COURT: What time did you get there?

THE WITNESS: About 10:00 o'clock. Shortly before 10:00 o'clock. I was due there 10:00 o'clock. I got there a little before.

THE COURT: What time, roughly, did you get into

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his office?

THE WITNESS: Right away.

THE COURT: Who was there? Were these other two gentlemen present?

THE WITNESS: Mr. Heinrich was sitting in Mr. Moss' office when I arrived.

THE COURT: Anybody else?

THE WITNESS: No, not at the time. Mr. Moss suggested that we go into the library where there would be more room and we went into the library and Mr. -- this fellow here. I don't remember his name.

MR. MOSS: Roger Briton.

THE WITNESS: Yes, Roger somebody was there. What's the last name?

MR. MOSS: B-r-i-t-o-n.

THE WITNESS: Pardon me for not remembering. So, there were the four of us.

THE COURT: No stenographer?

THE WITNESS: No, not that I know of. I didn't look under the table.

THE COURT: Stenographers don't go under the table. Bugs do.

In any event, you sat around. What did you talk about first? I suppose the weather or something of that

nature?

THE WITNESS: I guess so.

MR. MOSS: You talked about the weather in my office ahead of time.

THE WITNESS: Then Mr. Moss asked me when I went with the company and, I think, when I retired, and he asked me about the retirement provisions of being requested to stay on beyond age sixty-five. In other words, he was developing a little background from me before he started in asking other questions.

THE COURT: Sort of similar questions to what I asked?

THE WITNESS: Yes.

THE COURT: At what stage of the interview did the tread tuber come up?

THE WITNESS: I think it was towards the latter part of our interview that it came up.

THE COURT: So you left around 12:30 or so. Around 12:10 did the tread tuber come up?

THE WITNESS: It was a short discussion.

THE COURT: Who brought up the tread tuber?

THE WITNESS: I guess he did. I don't see any reason why I would have brought it up.

THE COURT: To the best of your recollection,

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what did he say about it?

THE WITNESS: I don't remember. He must have asked me a question with respect to it or he must have made a statement with respect to it, but I don't remember how it got started.

THE COURT: What is the first thing that was said about the tread tuber that you do remember?

THE WITNESS: Well, somebody, either Mr. Heinrich or Mr. Moss, made a statement that -- seems to me he said there seems to be so much to-do about this tread tuber. I think one of them asked me how important I felt it was with respect to the negotiations, and I said I didn't feel that with respect to the negotiations that it was of great importance, because if it had to have been of great importance, it seemed to me I would have been told to bring it up for negotiation, which I was not. I was not told.

Well, we all appeared to agree that it was not of great importance.

Now, today, Mr. Auerbach has drawn out other features of this thing which I testified to, according to the best of my ability.

THE COURT: Stay away from today and stay with yesterday.

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I take it Mr. Moss and Mr. Heinrich did what talking there was, and the other gentleman, the associate, he looked wise as an owl and said nothing?

THE WITNESS: That's all there was to it.

THE COURT: You agree that, as of yesterday, this was not of any importance?

THE WITNESS: Yes.

THE COURT: What was said about what the tread tuber was? What was said about that?

THE WITNESS: I simply mentioned -- I didn't know whether he had any idea what a tread tuber is, so I said, "It's just like a big meat chopper. You put the meat in and you get hamburger out. In this thing, you put the rubber in and you get treads out." That's all it amounted to.

THE COURT: Nothing was said as to when this tread tuber was originally ordered?

THE WITNESS: I don't think there was anything said as to when it was originally ordered.

THE COURT: It was not in operation?

THE WITNESS: No. I'm not sure but I think Mr. Heinrich sort of tried to inform Mr. Moss more about what it was, and Mr. Heinrich stated that the major part of this thing was in -- was in the warehouse, but the

accessory equipment was not all in yet. He mentioned about long tread conveyors. That's the conveyor on which this tread lands when it comes out of the tread tuber. Mr. Heinrich mentioned about that.

They had been working on these, clearing space for these conveyors, but they were not -- he didn't say this, but they were not actually working on it along towards the time of the negotiations. Nothing was being done with it.

THE COURT: You knew they were working on it before the negotiations?

THE WITNESS: I knew there was some work being done towards clearing space for these conveyors.

THE COURT: What did you -- the conveyors were something that had to be ordered yet?

I'm now leaving Mr. Moss' office and going back ten years.

THE WITNESS: I don't think they had to be ordered. I think they were on order.

THE COURT: What did have to be ordered? What was involved in this?

THE WITNESS: That letter Mr. Auerbach showed me, that did state, I believe, that some other equipment, conveyor, or some other equipment, was yet to be ordered,

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and that would be taken up with him --

MR. AUERBACH: Do you want it, your Honor?

THE COURT: Yes.

THE WITNESS: That would be taken up with him at a later date. I think that's it.

THE COURT: Who is Mr. Garrett?

THE WITNESS: He's a representative of the new owners.

You are asking me a question that's out of my realm.

Mr. Garrett was stationed at Conshohocken. I don't know who told me, but I understand that he was there to represent some of the foreign ownership other than Clairmont's holdings.

THE COURT: And Mr. Barkett, we have heard about him?

THE WITNESS: He was ~~fabric~~ factory manager.

THE COURT: That Mr. Clairmont brought in?

THE WITNESS: Yes.

THE COURT: And Mr. Van Anda?

THE WITNESS: He's the secretary of the former Lee Rubber & Tire Corporation. He's a New York man.

THE COURT: At this period was he at Conshohocken?

THE WITNESS: No. He was never there. I don't

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why he was sent a copy of that letter unless it was probably to docket this thing for the next board of directors' meeting, I guess, because he was the secretary to the corporation.

THE COURT: He operated out of New York?

THE WITNESS: Yes.

THE COURT: And Mr. Miles?

THE WITNESS: He was the plant engineer.

THE COURT: He was a local man?

THE WITNESS: Yes.

THE COURT: You knew him?

THE WITNESS: Yes. I hired him.

THE COURT: Once you hired him, he didn't report to you any more?

THE WITNESS: He didn't report to me, no.

THE COURT: In February of '63, what did you know about the tread tuber?

THE WITNESS: Naturally, when the company decided to install a new piece of equipment, a company as small as we were, when you are in the more or less top echelon, you know about these things as they come up. I suppose -- I beg your pardon, I said, "I suppose."

THE COURT: Talk like you are talking to your wife.

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THE WITNESS: I wouldn't dare open my mouth if I was talking to my wife. Give me another one.

THE COURT: Somebody in the local bar, or do you drink?

Go ahead. You are talking. Don't worry about being in Court.

THE WITNESS: In February of '63 -- well, we would have lunch together like Mr. Garthwaite, Jr., and Barkett and a few of us, at the luncheon club. We always would eat lunch together and, of course, we talked shop all the time. Any item like this, where the company was going to install a new piece of equipment, we all knew about it. There was no line of information passed out, actually.

THE COURT: What is your best estimate, as you sit there, and you can use "I imagine" or anything else you like -- did you know about this equipment having been ordered?

THE WITNESS: I didn't know about the second part of the stuff. See, the first part of the equipment was, they call it a head, the big head of this tuber had to be cast -- I guess it was cast -- and you could not buy these things. You could not go to a store today and have it delivered tomorrow. You had to have this thing made.

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I knew that had been done and that it had come in and it was sitting in the warehouse. From the best of my recollection, I didn't know that the other accessory equipment had been ordered.

THE COURT: Did you have any reason to believe that it had not been? Did you think they just ordered this big head and were dropping it there?

THE WITNESS: I didn't give it a thought. I don't want to give you a short answer, but I had a lot of other problems at that time. I was not worried about the tread tuber. The people that received a copy of that letter were those that were involved in the tread tuber, but I was not involved in the tread tuber.

THE COURT: You knew that the head was there?

THE WITNESS: Yes, sir.

THE COURT: Therefore, is it fair to assume, had you thought the completion of this tread tuber would have been important to the labor negotiation which was your concern, you would have asked either Heinrich, Barkett or Miles what about it?

MR. AUERBACH: Your Honor, may I make a point here?

THE COURT: You can make your point after.

MR. AUERBACH: With regard to --

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THE COURT: You can make your point after.

Is that fair to assume?

THE WITNESS: Well, it's fair to assume, if I had felt that the installation of this equipment was going to have a considerable effect upon our negotiation, but I didn't get into discussions about the tread tuber and I didn't know exactly what the status of it was. I knew by walking through the warehouse, I saw it, but I was not involved in the preparation of any of the arrangements to get this accessory equipment, and I didn't know whether the management intended to go ahead and install it or they were holding it up pending negotations. I didn't know the status of it.

THE COURT: You didn't ask anybody?

THE WITNESS: I didn't consider it that important.

THE COURT: If you had, you would have asked?

THE WITNESS: If I had of thought, yes.

THE COURT: You want to ask any more questions?

MR. AUERBACH: No, no. I just want to make a point that I think it's clear from previous testimony that the head, the first part that was in, came in and was ordered pre-Clairmont, and the whole point of all this was that as far as the people were concerned, this stopped when Clairmont came in, and as Mr. Conway testified there was

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nothing much being done before negotiations on it.

THE COURT: Any further questions on the tread tuber?

MR. MOSS: Not that I have tonight.

THE COURT: I won't foreclose any.

MR. MOSS: Not right now.

THE COURT: Tomorrow morning at 10:00 o'clock.

(Adjournment taken to September 20, 1973 at 10:00 o'clock a.m.)

UNITED RUBBER, CORK, LINOLEUM and
PLASTIC WORKERS OF AMERICA
AFL-CIO, et al., etc.

vs.

LEE NATIONAL CORPORATION

New York, September 20, 1973,
10:10 a.m.

Trial resumed.

- -

J O S E P H C O N W A Y resumed.

CROSS EXAMINATION CONTINUED

BY MR. MOSS:

Q Mr. Conway, were you the personnel director at Lee at the time that the United Rubber Workers first organized the production workers at the plant?

A Yes.

Q Did you negotiate the first contract?

A Yes, sir.

Q Did you negotiate every other contract between the rubber workers and the National with respect to the Conshohocken plant?

A Every other contract between Lee National --

Q Lee Tire & Rubber Company?

A As far as I know, yes, I did.

Q Would you tell me, please, how you handled those negotiations?

MR. AUERBACH: Objection as to form.

THE COURT: Perhaps the witness does not understand the question.

A I don't understand what you mean by that.

Q How did the company decide what proposals they were going to make to the union?

A Various officials of management would usually sit down and talk over various items that we wanted to bring up, proposals that we wanted to make. They would usually be mostly suggestions of mine but then the final decision as to what we were going to propose was approved by usually the president and the production manager and other people that were running the plant that would be involved in the administration of any agreements that we should make.

Q Who were the people from management who sat down and decided what you were going to bring up?

A As a rule it would be the factory manager — prior to 1956 the vice president in charge of engineering was always in on them. As a rule there were three of us that started the ball rolling in so far as deciding on

what the proposals would be, and that would be the vice president in charge of production, vice president in charge of engineering and myself. After we had them lined up we would take them into the president and go over them with him and he would make whatever suggestions he wanted to make.

Q What sort of suggestions would you come up with?

THE COURT: This witness or you, collectively?

MR. MOSS: I would like to know what suggestions he personally came up with about changes in the contract.

A We would come up with most anything that appeared to need correction or that may have given us trouble during the last year or so.

THE COURT: What were these terms? A year?

THE WITNESS: The term of the agreements?

THE COURT: Yes.

THE WITNESS: As a rule I think they would run about two years. We would go right through from the beginning of the agreement all the way through to the end and we would analyze every section, every article, of the agreement, and decide what we wanted to have corrected.

THE COURT: When you say "we," this is the

group of peopleyou have just described?

THE WITNESS: Yes.

BY MR. MOSS:

Q What sort of things did you come up with?

A We would come up, for instance, with changes -- we would not come up with changes in piece-work rates. That was handled on a day-to-day basis. We would come up with -- if I had a copy of the agreement I could tellyou better but I don't have it.

Q I will let you have one.

A We wanted corrections probably in certain provisions. We might even propose a wage increase which would be lower than we felt they were going to ask for in order to have something to start with, although that was very unusual. I don't know whether we ever did propose a wage increase originally. The union always came in with a proposal for that.

Q Did you ever suggest anything such as the key job protection from bumping?

A We tried it. We tried it in the past but we were never able to achieve our objective on it. We tried key job exemption quite a few years back with no luck.

Q What was the necessity for having key job

protection way back?

A The same as it was discussed yesterday, to try to protect the efficiency of the plant by not having experienced people bumped off of important jobs.

Q That means that there were layoffs back in those days, so you needed bumping protection?

A Yes. At times we had some layoffs.

THE COURT: Because there was fluctuation even in the best of times?

THE WITNESS: Yes, your Honor.

BY MR. MOSS:

Q Anything else you can remember that you came up with?

A We used to come up with a so-called management clause that was not anything like the one that we came up with, was mentioned yesterday, but we usually tried to get some liberalization of the management clause, reasonable liberalization, that is.

THE COURT: When did you try that, if you remember?

THE WITNESS: We did that several times, your Honor. I believe we also proposed some changes in the method of handling grievances.

THE COURT: What was preferable about what

you were proposing?

THE WITNESS: The various steps back through the years -- we didn't have the various steps of the grievance procedure that we finally ended up with. The final grievance procedure we had, we didn't have that originally.

BY MR. MOSS:

Q How did you make out on the proposals for liberalization of management rights?

A We accomplished a little bit in the way of scheduling of overtime, as I recall, particularly with respect to maintenance. We did have something else accomplished ith respect to this management-rights clause but I can't remember what it was. This is going back more than 10 years ago.

Q Did you have a Section 807 in the contract from the very beginning?

A I believe that was the change in rates?

Q Yes.

A I believe we had it right from the beginning but there were later negotiations in connection with that 807. I think at one time we ended up with that phrase, "extensive rearrangement of the processes or the operations." But we had considerable discussion on

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that 807.

THE COURT: You mean over the years?

THE WITNESS: Yes, your Honor.

Q You testified yesterday, I believe, that you were in charge of the industrial engineering section. It reported to you, am I right?

A Yes.

Q You were in charge of rate changes?

A Yes, sir.

Q Could you tell us, from your recollection, what limitations, if any, the contract imposed upon your ability to study and to rearrange the rates in the plant?

A Actually there were no limitations, but the union always had the right to file a grievance, and if we were unable to come to an agreement on any revised rates they always had the right to go to arbitration.

Q Are you saying that you could send somebody in and just restudy your rate and put it into effect without regard to the restrictions of Section 807?

A We lived up to 807 and still we could change rates.

THE COURT: If you did change them they could grieve?

THE WITNESS: Yes, your Honor.

THE COURT: Then you had the final word at

arbitration?

THE WITNESS: That's correct.

I explained yesterday the way we accomplished some of that. We would either talk it over with the union or we would endeavor to have some extensive rearrangement in order that it wouldn't violate the provisions of 807 before we changed the rate.

Q Section 807 provided that upon the introduction of any new item into production or the reestablishing of an operation that has been previously discontinued, that you could restudy the rate?

A Yes, sir.

Q It also went on to say, "Or where it is necessary to change the method, machinery, tools, material, design, or production conditions of an item, and the elements or factors of time, material, mechanical devices, or work performances are extensively rearranged, the piece work should be arrived at by the use of present time study practices."

Could you restudy your rate if you didn't extensively rearrange the factors listed here?

A We could restudy it in accordance with some of those other provisions. There may have been some introduction of new items. That would not be a restudy, though.

We didn't have -- there was no problem back in the old days about restudying rates. We went in any time we wanted to and restudied rates. But it was always a bilateral proposition. The union always had the opportunity to file a grievance against anything we did in connection with change of rates.

Q Supposing you could not extensively rearrange the design or production conditions, the material, mechanical devices or work performances. The job was the job. What then?

A There were times when we felt that the earnings were out of line, that possibly the original basis, or the original rate was too loose. If it got to the point where we felt it was too far out of line, we would call the union in and we would have a conference with respect to it and tell them we were going to have to reach a restudy.

Naturally, we would have discussions about it. You can't run a plant very well with a union without having discussions about nearly everything.

If they still would not agree to it -- it all depended upon the circumstances -- we might go in and restudy anyhow and take a chance on them filing a grievance and take a chance on our winning the arbitration case. But

they always had the privilege of aggrieving. I don't know whether that's a good word or not, but you know what I mean.

THE COURT: I thought you said"agree."

THE WITNESS: I don't know whether there is such a word.

THE COURT: There is now.

Q If they aggrieved,your changes had to be in accordance with this provision of the contract; is that right?

A If they aggrieved? Well, we might go to arbitration.

Q Then you had to live up to the conditions of this provision in the contract?

A If the arbitrator ruled against us.

Q You said yesterday in your testimony that sometimes you restudied the rates and the union representative might possibly go along with this. How frequently did the union representative go along with you on a rate that you just said, "We think this is too loose"?

A They went along fairly often in the original -- well, going back to the time when we had another local international representative, he seemed to know conditions very well and quite often he wanted to come down and talk

to us about a rate. They might initiate the question about a rate. We would always permit him, as I said yesterday, we would permit him to go in and take a look at the operation. We didn't insist on being with him. We trusted him.

Q You say he might go in and initiate something about a rate. You mean he might come in and tell you the rate was too loose?

A He would not come in alone.

THE COURT: Who is this "he"?

THE WITNESS: The local international -- I think they would call him the district representative.

THE COURT: What was his name?

THE WITNESS: The fellow I'm talking about was named Fred Howard.

THE COURT: Was he the predecessor of --

THE WITNESS: Sabol, Mike Sabol. I think Mike Sabol was here.

THE COURT: The president's name was what?

THE WITNESS: Hess.

THE COURT: What relation did this fellow have with Hess?

THE WITNESS: This fellow -- I don't know as he ever came in alone. They don't operate that way. He would

either come in with Hess or the previous president, or possibly the committee man of the department in which the operation was being performed.

THE COURT: You said he seemed to have an understanding. I gather you were contrasting him with his successor; is that correct?

THE WITNESS: I don't like to say anything against anybody.

THE COURT: That's the unfortunate result of being under oath. Sometimes you have to.

THE WITNESS: We got some of that under Sabol, but we initiated that type of action under Fred Howard and he bing sort of partially father to the thought, you might say, of doing it that way, I think he was probably more inclined to go along and handle differences than, say, Sabol might have been.

Q I draw your attention to the last clause of Section 807:

"When it is necessary to make such changes or establish new rates, the established relationship between earnings and effort will be maintained."

What does that mean to you?

A You could not add a number of new operations and expect them to make out the same as they did on the

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old rate. You had to base it all -- we used to have a so-called base rate and you would base your new rate on the base, but you would not add operations to it without compensating for it in the piece-work rate.

Q Doesn't that mean you could not use 807 to make people work harder to get the same money?

A I just can't quite agree with that, because you say "work harder." We might even change some of the procedures in the standard operating procedure describing a job.

THE COURT: What exhibit are you referring to?

MR. MOSS: 35. It's Page 28. It's a Xerox of the contract.

THE COURT: I guess I have the typed copy. Give me the book.

MR. TAYLOR: This is a copy of the contract, Page 10.

As a matter of fact, you have it right there.

THE COURT: It's a different document -- the same document, but a different page.

I have it now. Thank you.

A I don't know whether you could say that you could not force them to work harder. You might make some changes that -- you might even eliminate a couple of steps in the

procedure, and at the same time you might offset the elimination by changing or adding some other step. When you get into the mechanics of the wage incentive system you are really into a lot of intricate detail.

Q You administered this contract. How did you administer that last phrase with respect to changing rates? It says you must maintain the established relationship between earnings and effort.

A We always did.

THE COURT: That seems to me to prevent speed-up without increased compensation.

MR. MOSS: I agree. You can't make them work harder for the same amount of money.

THE WITNESS: You can make it more efficient and might make more production. They might be making more money by making it more efficient, but it all depends on whose language you are talking about, about this business of working harder.

During our discussions throughout the years in connection with wage rates, I don't believe -- we didn't discuss it from the standpoint of an employee working harder. We discussed it from the standpoint of the production that we would get out of that man and what his expected earnings might be, but this working harder, I think,

is somebody else's fabrication rather than anything that appeared in our negotiations.

Q Tell me, if you could not find any way to change the job, what did you do about changing the rate, if you thought it was loose?

A If we could not find any way at all? We're going around the barn again.

We would call the union in and have a discussion with them.

Q If the union would not agree, what did you do?

A Sometimes we would try to get through and restudy it and tell the union we were going to restudy it and it was their privilege to file a grievance on it if they didn't agree with the revised rate.

Q What did you do the other times?

A Could you be specific about that?

Q You said sometimes you restudied it anyway and told the union they could grieve. What did you do the other times?

THE COURT: Other times you gave it up and didn't do anything, I assume?

THE WITNESS: You might give it up for the time being. You could keep that in the back of your head as something that you were going to try to accomplish sometime

in the future when there might be some other change made, either in S.O.P. or in the work in process, the different types of material and different types of equipment that might be used.

Q Did you have jobs in the plant which were not on incentive?

A Yes, sir.

Q Section 807 referred only to changes in incentive, correct?

A I think so. You have the contract. I don't have it.

Q Would it help you if I showed it to you again?

A You can tell me.

THE COURT: Give him a copy of it.

Which one are you used to, the printed one or the typed one?

MR. TAYLOR: The print is larger on this copy.

MR. MOSS: I can refer to it by section, your Honor.

(Pause.)

Q Section 807 refers only to piece-work rate, does it not?

A Yes. That's right. The piece-work rate should be arrived at by the use of present time study practices.

MR. AUERBACH: Would it be all right to hand Mr. Conway this small printed agreement?

THE COURT: He preferred to take the one he has.

MR. AUERBACH: I'm sorry.

Q Suppose you wanted to make a change in the flat rates, the hourly rates, what way did you have to do that?

A We would do it the same way except we might not even -- as a rule, we would take a time study on it.

As a rule, in case of hourly rates, those changes would be made based upon the change in the methods or equipment or materials that were being used, and then you would go through the same procedure. You would have a discussion with the union. They might file a grievance or we might be able to work it out between ourselves.

Q Did you ever change downward any hourly rates in the course of your administration of this contract, in agreement with the union?

A I can't answer that. I don't know. That question, depending upon -- during my administration, that goes back from 1927 to 1963, and I certainly can't be expected to remember whether I ever adjusted any downward rates in thirty years' time.

Q Were they fixed in the contract?

A Fixed in the contract?

Q Yes. The hourly rates for certain jobs.

A No, sir.

Q You had the right, you claim, the company had the right, to make changes in the hourly rates during the course of a collective bargaining up or down without the union's consent?

A It depends upon whether there was a change in the job content in the standard operating procedure. If it disclosed a difference in the operation, a difference in the type -- there might have been some revision in the piece of equipment that was being used itself, and there would always be a reason. We didn't go in and just cut a rate because we wanted to. There was always a reason.

Q What kind of people are we talking about who were on hourly rates? Maintenance people?

A Maintenance people were on hourly rates, yes.

Q Why would you time study that job?

A We didn't time study maintenance people.

Q Who else was on hourly rates?

A There were other jobs in the factory where the production was controlled by the time cycle.

THE COURT: What's that?

THE WITNESS: In other words, let's say if you are a Banbury mixer -- this is Greek to you -- a Banbury

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mixer is a good-sized piece of equipment in which you dump rubber and sulphur and other chemicals in order to get a good mix. You don't put any toothpaste in it. So every one of those million batches was controlled by a certain amount of time during which that stuff should be mixed together in order that it would be properly mixed so that it could be vulcanized or cured when it got to the proper place.

THE COURT: There was nothing that the worker could or should do to speed the process?

THE WITNESS: No, your Honor. It had to be done according to that time cycle.

THE COURT: So there would be no point in giving him an incentive rate?

THE WITNESS: No, sir.

In fact, it's an interesting point, I think, that I just learned recently, that the Goodyear Tire & Rubber Company who are now operating that plant, and have been for the past, I don't know, seven, eight or nine years, something like that, I've been told that all the jobs in that plant now are on hourly rate except the tire building job. That, according to what Mr. Clairmont insisted, everything had to be practically on piece work, but here the successor company has everything on hourly rate except

this one operation of tire building, I'm told.

THE COURT: Can I interrupt your train of thought?

MR. MOSS: Yes, sir.

THE COURT: I would like to get back to questions I was asking yesterday.

Do you have that memorandum about the treader tuber?

MR. AUERBACH: Yes.

THE COURT: These names here of Van Anda, Miles, Barkett -- as I remember, all but Barkett were people working in the plant.

THE WITNESS: No. Van Anda was not working in the plant.

Repeat the names.

THE COURT: Heinrich, Garrett -- who is he?

THE WITNESS: He was located in Conshohocken. I understand he was representing a foreign ownership.

THE COURT: Barkett was the plant manager that Clairmont brought in?

THE WITNESS: Yes.

THE COURT: And Miles?

THE WITNESS: He was a plant engineer.

THE COURT: You mentioned the fact that you used to have lunch with these people.

THE WITNESS: Yes, sir.

THE COURT: With all of them? It was customary, but it was not the same every day, was it?

THE WITNESS: Not as a rule.

You see, we had the various industries throughout that little area, the Conshohocken area, there were five or six good manufacturing companies there, the bank, and so forth. We had formed what was known as the Conshohocken Association. There was not a good place in the Conshohocken area to get your lunch.

THE COURT: Sounds like this courtroom.

THE WITNESS: We had a one-horse cafeteria.

The executives of these various companies in the area bought this home which initially was originally the old Lee mansion, the founder of the company, so it was a privilege to be given a membership in this association because you were able to mix with the so-called top brass of the other companies, also.

What I'm getting around to is the fact that when Mr. Clairmont came on the scene and started cutting out expenses, that was one of the expenses that he eliminated, so after that we didn't have the same opportunity to get together for lunch because there was no common meeting place, you might say, so that was -- I don't know when that

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association, as far as we were concerned, Lee memberships were discontinued. The membership was not too cheap, so everybody then went to other places, and we didn't have the same opportunity to talk shop during lunch as we had before. That's what I wanted to drive at.

Back prior to that time, as I said yesterday, we would get together and we would talk shop during our luncheons.

THE COURT: After that, were there any exceptions to that cutting out? Did Mr. Heinrich keep his membership and you not?

THE WITNESS: I don't think that anybody kept their membership.

THE COURT: Where did you eat after that?

THE WITNESS: We scattered around different places.

THE COURT: You didn't eat in the cafeteria?

THE WITNESS: Yes. Occasionally. There were a few other luncheonettes around where you could go occasionally.

THE COURT: Would you eat with Mr. Barkett?

THE WITNESS: I can't remember eating with him after the Conshohocken Association was discontinued. I used to eat with him when we were eating in the Association.

THE COURT: Is there any record of when that happened, that discontinuation?

MR. HEINRICH: Conshohocken Association was really a luncheon club. It was disbanded in the fall of 1963 or the winter of 1963. All members were through with the Association, and then the proceeds to the companies who were company members. The companies got the refund. We had, for example, restaurant supplies, and so forth. In the meantime, I did not maintain a membership.

THE COURT: I was trying to get the date of it.

MR. HEINRICH: It was in -- I happen to know that during the strike period, which was sometime after July 16th, we even called a meeting, Mr. Conway called for a meeting to be held for some of our officers to meet at the Conshohocken Association, so I know it was in existence, as does Mr. Conway, by late July of '63. It was defintely there still as a place to meet and we used that facility to talk to our office employees who could not gain access to the plant because of picketing.

THE COURT: It was late in August?

MR.HEINRICH: We disbanded it probably in the winter of 1963.

THE COURT: The strike started in July?

MR. HEINRICH: In July.

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THE COURT: '63?

MR. HEINRICH: Yes.

THE COURT: When you say the winter of '63, you mean December?

MR. HEINRICH: That's right.

THE COURT: Does that conform with your recollection?

THE WITNESS: Generally. I think that the individual memberships of the people like myself were cancelled prior to the winter of '63. In other words, the company notified us that they were not going to subsidize any part. They used to subsidize part.

THE COURT: I'm trying to get the feeling of your habits during this period. I'm not really concerned with this other issue you brought up, which is a legitimate issue. I'm not driving at that. I'm trying to get the time as to how the operation was run.

THE WITNESS: The point I wanted to bring up in connection with what Mr. Heinrich stated was although our memberships were not cancelled at that time, we were told that the company would no longer subsidize any part of our lunch cost, which was the practice prior to that.

THE COURT: When did this happen, as far as you are concerned? Before the strike or after the strike?

THE WITNESS: I can't remember. I know most of us stopped going because it became too expensive for us.

THE COURT: That's when the company told you you had to pay for yourselves?

THE WITNESS: Yes.

Of course, the company still had that membership and the company could hold those meetings, and did hold the meetings, that Mr. Heinrich spoke about, but we were not using it as a get together, our small little group, for lunch and talking things over like we had done previously.

THE COURT: You can't remember when that stopped? Or can you?

THE WITNESS: I can't.

Mr. Clairmont started cutting all kinds of expenses.

THE COURT: I heard that the last time.

THE WITNESS: I can't remember when he started cutting. He got at those that he thought were the most salient ones, I guess, first, and then he kept cutting back and back and so forth. Of course, that's irrelevant to what he did cut back, but one of the things he cut back was the subsidization of our lunches.

THE COURT: When he cut it back, what was your relationship with Barkett? Friendly or unfriendly?

THE WITNESS: Friendly.

THE COURT: After you lost the opportunity of talking to him at the lunch club, whenever that happened, would you find occasions to talk shop with him?

THE WITNESS: Occasionally.

THE COURT: Where would you do that?

THE WITNESS: He might come to my office and sit down and chat for awhile.

He didn't sit in on too many negotiations. He was in on some. I don't think he was in any until we got into the contract negotiations. That was not until May.

Around the office. He might chat for awhile. Of course, he had a job to do and I had a job to do. We fellows didn't do much loafing.

THE COURT: I guess not.

Did you have any relationship with Van Anda?

THE WITNESS: No. He was in New York.

MR. MOSS: Paul Van Anda was a member once of the firm of Spence, Hotchkiss. He was the New York lawyer who was the secretary of the company and dealt with their legal business in New York.

THE COURT: I'll cross his name out so I don't ask that any more.

Garrett was a representative of the foreign --

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THE WITNESS: So I understand.

THE COURT: Did you have any friendly relations with him?

THE WITNESS: I guess you would call it friendly relationship. I think I got along with everybody.

THE COURT: Did you talk shop with him?

THE WITNESS: His interests were entirely different from mine. I wouldn't have had any occasion to talk shop with Garrett.

THE COURT: And Miles?

THE WITNESS: Miles, naturally, he would talk to me mostly about the personnel of his department and whether I thought they should work -- he was in charge of the maintenance department -- whether I thought they should work the men on possibly a Sunday or something like that. He had to be very careful with the proper distribution of overtime, so that one fellow would not get a lot more overtime than the other fellow. Matters like that, he would discuss with me.

THE COURT: Your relationship with these fellows was that your conversation would be limited to the problem presented, or would you discuss the problems of the plant?

THE WITNESS: We very rarely ~~ranted~~ ranged to the general problems of the plant. It was all, as a rule, some

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particular reason why I had occasion to discuss something with one of the other fellows, or vice versa. We didn't have a lot of ranging around or talking about plant affairs, not a broad range. Practically all the time it was a specific discussion of some kind.

THE COURT: How about Mr. Heinrich? Did you ever chat with him?

THE WITNESS: Oh, yes.

THE COURT: During his tenure there would you call your relations with him friendly or unfriendly?

THE WITNESS: They were very friendly. We chatted a lot. By "a lot" --

THE COURT: I take it you didn't have too much time to do too much chatting?

THE WITNESS: We were pretty busy. We didn't have time to do fooling around.

Mr. Heinrich and I were very friendly.

THE COURT: You chatted about the job; that is a fair statement?

THE WITNESS: Yes. We chatted -- I think he and I chatted about most everything. We were out to lunch together. Mr. Heinrich and his wife took my wife and I out to dinner on several occasions. There was not much shop talking when the women were around, but we were

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very friendly.

THE COURT: Can you remember expressing to Mr. Heinrich any of the concerns you expressed to us yesterday about what Mr. Clairmont was doing?

THE WITNESS: I can't remember expressing that to him.

THE COURT: Or to Mr. Barkett?

THE WITNESS: I may have in some remarks, either from or to Mr. Barkett, because he was just -- he just came there about January of '63, and within a few months he was getting pretty disgusted with the manner in which things were going and he even told me that it was not turning out the way the picture had been painted to him at all and he was pretty discourgaged.

THE COURT: You don't remember any specific conversation with him on any of these subjects?

THE WITNESS: I'm under oath. He told me one time he was sorry he ever took the job.

THE COURT: You could almost take judicial notice of that, the way things turned out.

THE WITNESS: Yes.

THE COURT: Did you ever discuss union negotiations with him?

THE WITNESS: I suppose we would in the course of

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negotiations. I probably did, no doubt, because he was very much interested in the entire negotiations. We, no doubt, would have discussed various features.

THE COURT: Did you ever discuss the tread tuber?

THE WITNESS: I don't recall ever having discussed the tread tuber because that was, as far as I knew, more or less a dormant item. The big piece, the head, was reposing in the warehouse and, as far as I knew, except for clearing a space for some of the conveyor equipment, I don't recall any activity in connection with the installation of that piece of equipment.

THE COURT: Do you remember asking what were the chances of getting this tread tuber moving?

THE WITNESS: I didn't take it that seriously. The main body of the tread tuber was there in the warehouse. When we were in negotiations in May, from my recollection, I don't think anything was being done about installing it, and that was not really within my realm to ask them when they were ever going to install it or why the work was not being done. As I said before, I remember seeing some work done on clearing space for the long conveyors, but it didn't strike me that seriously.

THE COURT: I have to say what the facts are. The Almighty does not come down and tell us. I'm a poor

substitute for that. I'm telling you what I'm thinking. I want you to comment on it.

One side here thinks the tread tuber is extremely important and would have been in this negotiations, and the other side thinks it is not. It seems to me that if it was important, as one side thinks it is, you would have talked to one of these fellows that we have been talking about and say, "Why don't we get cracking on that tread tuber and clean up the whole mess?" That's why I'm asking you these questions.

What is your comment on that?

THE WITNESS: I think I can quote this correctly. Mr. Moss spoke --

THE COURT: I don't care what Mr. Moss said.

THE WITNESS: This has relevance to what I want to say.

THE COURT: All right.

THE WITNESS: Mr. Moss spoke yesterday afternoon about the subject of the tread tuber and asked me several questions of didn't I say this and didn't I say that the day before when I was in his office.

THE COURT: Lawyers always do that.

THE WITNESS: Well, at the conclusion -- that discussion didn't last, I would say, more than five minutes.

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At the conclusion of it, I think it was Mr. Moss who said, "Well, nobody seems to think that the tread tuber is a great big thing except the Judge."

If I am misquoting Mr. Moss, I apologize.

MR. MOSS: You certainly are.

THE WITNESS: Somebody said that. I didn't say that.

THE COURT: Nobody remembers anything that's unfavorable at the moment. You would not remember that, would you?

MR. MOSS: Yes, I would.

THE COURT: I don't care what Mr. Moss ~~said.~~ said. I'm only interested in what you think.

THE WITNESS: As I testified in answer to Mr. Auerbach's questions, he brought up -- he brought the thing into a different light.

THE COURT: I know it's hard, but I'm trying to get your thinking back in those days before you met these contentious people.

THE WITNESS: My thinking back in those days was that we had a lot bigger job to do to try to get a satisfactory agreement and to try to keep the plant from being closed than to worry about one piece of equipment which was only going to use a few employees.

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I don't know what the final cost was -- I don't know whether it ran up to -- that letter quotes about $200,000, but there was more besides that, I think.

THE COURT: Before you met these contentious people, had it ever occurred to you that by putting in that tread tuber you could have solved the whole problem?

THE WITNESS: No, your Honor. No.

At that time I was not thinking in terms of that, of course, of solving the problem in connection with using the tread tuber in our discussions during negotiations at all. But, of course, the point that I brought up yesterday was that if I had been told or realized that --

THE COURT: That they had committed all this money?

THE WITNESS: This money was committed and it was scheduled for production in July of 1963. I feel certain if I had known that, I certainly would have thrown that out on the bargaining table as a point of information, to try to show the union that Mr. Clairmont was showing good faith by spending that money, but that didn't occur to me at that time.

THE COURT: That particular thing couldn't have occurred to you because you didn't know the money was being spent?

THE WITNESS: I didn't see a copy of that letter. I didn't know that that money had been authorized. I didn't know that that money had been authorized. I knew we had the head but I didn't know the other money --

THE COURT: You have answered my question. Thank you.

THE WITNESS: You are welcome.

BY MR. MOSS:

Q Having learned they did spend the money, do you consider that evidence of Mr. Clairmont's good faith in meaning to keep the plant open?

THE COURT: No, no.

MR. MOSS: He brought up this matter that he would have thought --

THE COURT: I ruled that you have a motion to strike all his testimony as to his opinion of other people's --

MR. MOSS: I'm not asking him his opinion of other people, but his own.

THE COURT: Of Mr. Clairmont's good faith.

MR. MOSS: Whether he considered that to be an indication of Mr. Clairmont's good faith.

THE COURT: That's irrelevant.

MR. MOSS: It's the point of the case, is it not?

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THE COURT: I have decided that.

MR. MOSS: Can he not testify, in view of what you have allowed him to testify as to his own side as to whether he considered it --

THE COURT: If you want to waive all your objections.

MR. MOSS: I don't, to his views of Mr. Clairmont's motivation. I want to know his view of what he thought --

THE COURT: -- as to Mr. Clairmont's motivation. That's irrelevant.

MR. MOSS: He has been allowed to testify that --

THE COURT: I propose to grant that motion to strike.

MR. MOSS: He was allowed to testify yesterday --

THE COURT: He was allowed to testify as to his opinion as to all kinds of things about Mr. Clairmont's motivation and I said that was all subject to your motion to strike, and I intend to grant your motion to strike.

If you want to waive that, go ahead.

MR. MOSS: I think he said enough to think it was an indication of his good faith.

THE COURT: You can argue that to me.

MR. MOSS: At least he would have used it at the bargaining table, as such.

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THE COURT: He has testified to that.

MR. MOSS: Let's get back to where we were before.

BY MR. MOSS:

Q What is your definition of a job evaluation program?

A In short, it's just exactly what it says. It's the evaluating of a particular job according to the effort that is put forth, according to the difficulty in performing the specific job, and it is taking into consideration all factors that are involved in doing something. In other words, if you were taking a job evaluation of my picking this thing up and putting it over here and putting some glue or something over there on it, you would evaluate the effort and the difficulty and any other conditions that might apply in connection with a performance of that particular operation.

In other words, when we would establish these standard operating procedures that included all operations during the operation of that particular job, and when you make a job evaluation you have to evaluate the amount of time and effort and other conditions that go into every item that's on that standard operating procedure, and then you come up, finally, with a figure that's based on your so-called base rate, and you figure out how much above the

base rateyou feel this particular job should pay, providing you get 100 per cent effort, 100 per cent working conditions, 100 per cent good material, and so forth.

Q You are talking about that with respect to the evaluation of an individual rate, is that right?

A Yes. You can multiply that by all of your other rates.

Q What did you do about a job evaluation program? How did that affect base rates?

A The base rates -- you are getting into such a technical discussion here, it's hard to answer some of these questions.

You would have a base rate -- I just finished describing that -- and you would establish a piece-work rate depending upon the amount of money that you expected the operator to make out, providing he was performing the job in a satisfactory manner.

Ordinarily you didn't have to change the base rates. You changed -- well, I wouldn't say ordinarily you would not have to, because it all depended upon the particular conditions of the job in question and whether there had been an extensive rearrangement of the work, but the rate, the base rate, was not so important because you were attacking it from the other angle. You wanted

to get 100 percent performance and you wanted to get the proper incentive earnings, so you established your rate with that in mind and you didn't worry too much about base rates.

Q You say that the base rate is not important?

A It all depends on the structure of your job evaluation program. We never considered our base rates were important because we were compensating the employees on a piecework basis, depending upon the amount of money that we felt each job should pay.

Q When you got this information which you said you got from various associations yesterday, did you get any rate information?

A Rate information?

Q Rate information.

A No. I don't believe we got any rate information. We got --

THE COURT: My recollection is that you did not get rates, you testified.

A It was job classification earnings. Take a tire builder. How much per hour was that man earning in Firestone and Goodyear and Goodrich and Lee and so forth? Every job classification that was in a tire plant would be covered by this survey and the amount of hourly earnings

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that were being earned in each plant in the survey were what we would always check.

We didn't care what the rates were because that had no bearing at all. What we were interested in was how much the employees were earning per hour.

Q If that is all you were interested in, isn't it true that you didn't have any idea how much each man, who was earning the same amount as your man in Firestone, was producing as against your man, did you?

A There is a --

Q Did you or didn't you, Mr. Conway?

A I'm not going to say yes or no to that because you have to give a qualified answer. Most of the equipment was different. Most of the preparation --

THE COURT: You can give a yes or no answer to that. Whatever reason these qualifications might have on the effect of the importance or unimportance of your answer, you can answer as to whether you knew, or did or did not know, whether, how much production Firestone was getting per dollar of wage and how much production your company was getting per dollar of wage.

You either did or didn't know it.

THE WITNESS: The answer was yes. If I have to give a yes or no answer, I would say yes, we did know.

Q How did you know that? You testified yesterday you didn't get any productivity figures.

A Not necessarily productivity, but, for instance, to stick with the tire building, that is what I would call the most important job in a tire plant, a tire building operation in any of the big four, say, Firestone, for instance, as compared to a tire -- the same building of the same tire in the Lee plant, it would, as a rule, be different because the equipment might be different and the servicing of the component parts to the builder as a rule would differ in one way or another, and that had an effect upon the number of tires that were being turned out by each individual tire builder in each plant.

Q So how did you know --

THE COURT: In the next five minutes, pick a good time to break.

Q How did you know those different factors were there that if one guy made $250 a week in Firestone and the same tire builder in your plant who might have different equipment earned $250 a week, how did that show you that your production was equal to the production of that man at Firestone?

A How does it show me?

Q Yes. How did you know that the production was

equal or unequal, or comparable or incomparable?

A Well, actually, we didn't -- we are getting down-- we have been on the tire building classification and we used to get the productivity per man-hour and that was for the plant, and in that way, we could tell whether our plant was producing the product as efficiently as another plant.

Q Your testimony is that you got overall productivity figures from your competitors per man-hour in the plant.

A We --

Q Yes, or no, Mr. Conway.

A Ask your question again.

Q Is your testimony now that you got regularly, productivity per man-hour of your competitors regularly?

A Not regularly.

Q Infrequently?

A That was an informal exchange of information.

Q What does that mean?

A When I would go to association meetings and other meetings in company with the other company labor relations people, we would exchange information of that kind on an informal basis; you might say, off the cuff.

Q What would you tell them about your productivity per man-hour?

A I would answer their question.

Q What would their questions be?

A I don't know. I can't tell you what the questions would be.

THE COURT: This was the kind of gossip that you indulged in?

THE WITNESS: Yes.

THE COURT: You didn't show each other your figures?

THE WITNESS: No, we didn't.

Q Where did you learn the productivity figures of Lee per man-hour?

A I'm trying to think of who prepared it. We had that information. I can't very well say I guess, but -- I didn't prepare it. It was prepared in the office somewheres.

THE COURT: I think this would be a good time to break.

Just to avoid questions from Mr. Moss, don't discuss this with anybody else during the break.

(Recess)

Q How detailed was this productivity gossip that you all exchanged at these meetings?

THE COURT: Gossip was my word for it. He didn't adopt it.

MR. MOSS: I thought he did adopt it.

A I didn't get that.

THE COURT: I used the word "gossip." I didn't think you adopted it.

THE WITNESS: I adopted your word "gossip"?

THE COURT: Did you?

THE WITNESS: I would not call it gossip.

THE COURT: Would or would not?

THE WITNESS: I would not.

MR. MOSS: All right.

Q How detailed was this information that you used to pass on to one another by word of mouth at these meetings about productivity?

A In detail, it would usually involve the type of equipment, type of machine that was being used in the specific plant in order to permit the people who were discussing it to determine whether they were talking about the same machine in one plant and -- rather if they were comparing, you might say, apples and oranges, because there were all different types of equipment.

I'm talking particularly, again, with respect to the tire building operation because there, there were a number of different types of tire machines and there were a number of different procedures for supplying the tire builder with the component parts of the tire, so you had to take all of those things into consideration when you found out or when you were discussing the amount of productivity that any certain, say, tire builder was producing.

It depended on the feeding of the materials to this man because that all entered into the cost of producing that tire.

Q When you brought all this information or such information, as it was, home with you, did you tell it to anybody?

A Yes. I would usually tell it to the production manager.

Q Did you tell it to Mr. Clairmont?

A No. When Mr. Clairmont was there, I don't recall having attended any of these, you might say, so-called bull sessions.

Q Prior to Mr. Clairmont's coming, did you discuss it with Mr. Garthwaite?

A Sometimes I would, but Mr. Garthwaite usually left the responsibility of that up to me to bring to

usually the production manager and he and I would discuss it in much greater detail than we would with Mr. Garthwaite, although we would apprise Mr. Garthwaite of it.

He actually didn't get into the mechanics of the various operations and so forth.

Q I understood you to testify yesterday -- was I wrong -- that you had no connection with the production end of the business.

A I don't know what you mean by I had no connection with the production end of the business. I think everybody in the plant had some connection with the production end of the business.

Q What was your connection with the production end of the business?

THE COURT: I think he said he had no responsibility.

A I didn't have responsibility for the production but naturally I was involved in any employee activity that might affect production.

I would say I was involved in production in that way but I didn't have the responsibility for the production. We had a production manager, the vice president in charge of production, he was the man who was actually responsible for the production.

Q Was that Mr. Barkett?

A During the end it was Mr. Barkett, but that only lasted a few months before the strike. I'm talking more about the long run prior to Mr. Barkett.

Q You said just a little while ago, I believe you said Mr. Barkett arrived on the scene January 1963.

A I think so.

Q You used to have conversations with him from time to time of which you repeated one when you said he was sort of dissatisfied with how things were working out.

A Yes, sir.

Q In any of these conversations, did Mr. Barkett discuss with you that the company was getting adequate production per man-hour?

A I don't recall such discussions.

Q Just before we leave Mr. Barkett, in this conversation in which you said he was pretty fed up because he thought things were not working out the way he had been told they would, did he tell you anything about how he had been told how things would work out when he was hired?

A No, he didn't. No. I must answer that no, sir. He didn't tell me how, according to the way you phrase your question, did he tell me how he thought things would work out --

Q How he had been told what his future would be at Lee Tire and Rubber?

A Not in detail but he told me that there had been such a rosy picture painted for him that it was too good to pass up, at least he thought it was.

Q Did he describe at all the rosy picture which was painted?

A Not in any detail.

THE COURT: Who painted this rosy picture?

THE WITNESS: Mr. Clairmont.

Q So all he said was that rosy picture was painted so good he couldn't pass it up, he gave up the other job and came here and it was not working out the way he thought?

A Correct.

Q Can we get back to job evaluation.

How did job evaluation affect, as you define it, hourly rated people?

A How did it affect?

Q A job evaluation program, how did it affect hourly rates?

A A job evaluation program -- well, I have to repeat what I said yesterday:

We were in the process of evaluating jobs in the plant having hired approximately five or six industrial

engineers and we were starting out on piecework jobs and jobs that had no rate for some reason or other, but eventually we would have gotten into the matter of hourly rated jobs depending upon the responsibility -- if you are familiar with the manner in which the Ford Motor Company pays their employees, we would have gotten into the same type of job evaluation with them.

They determine how arduous the work is, what the working conditions are, and whether or not there is a chance to get a breather occasionally, whether they have to stay on the production line all the time.

All those items are taken into consideration in connection with job evaluation of an hourly rated job.

That is what I'm told Goodyear did at Conshohocken now. Those jobs are all evaluated, except the tire building, on an hourly basis depending upon the various conditions.

Q Mr. Garber for the union, ~~it~~ he was an international ~~union~~ representative for the URW, we asked him, considerable examination of him, on the subject of job evaluation and on direct examination by Mr. Auerbach or Mr. Taylor, we were trying to get a definition of job evaluation and this is what he said on page 613 of the record:

"It might be of some help if you would explain

briefly what you mean by the terms 'time study' and 'job evaluation.'

"Answer: Job evaluation is a system which gives you the relative worth of one job as compared to any other. You want to set your plant so that you will know what job B is worth in relationship to job A or C or D, and this is done by a series of evaluations based on factors and degrees such as responsibility for equipment, responsibility for materials, responsibility for safety, the physical effort required, the responsibility for quality, the skill requirement, training requirement, educational requirement.

"Each of these factors is rated and after they are rated, there are five different categories they fall into. Each of the categories gives a certain point value for each of these different types of job values and the total number of points are then assigned to that total job based on this evaluation.

"Those points then are related to the points that would be arrived at by the same process or any other job in the plant or the total jobs in that plant compared to the total jobs compared in another plant.

"It gives you relative value so you know the sweeper's job is worth so much money and the tire builders is worth X dollars and cents compared to something which is

the base point.

"If you are starting off from a new plant, you would normally get three, four, five or ten jobs in the surrounding vicinity and have the job descriptions of them, evaluate them and set a curve and then you would plot on your own plant all the job descriptions of all the jobs you intend to have, evaluate them on the basis of the job description, and relate them to the values of the area.

"If you are going to do just a new job in your plant, you would already have your curve from the jobs that were in existence and evaluate it in your own plant. This would fit into the curve based on the new job description and the new job factors and the new job points."

Is that what you were involved in doing?

A We had not gotten that far yet.

Q How far had you gotten, Mr. Conway?

A We were setting up standard operating procedures for each job. This -- was that Garber that made that speech? He made a much better speech than I did, didn't he.

I didn't get into all that detail but take, for instance, all companies do not use that five-point system. There are other systems that they might use. But we were doing some of that. We had already started it on some of

our office jobs and we were using a point system there.

Q Did you have any arrangement with the union that you could do an overall job evaluation of every job in the plant, hourly and incentive?

A We had already started, as I already --

Q That is not what I asked you. I asked you if you had an agreement with the union that the company could make a large scale total evaluation, such as Mr. Garber outlined, of every job in the plant without reference to Section 807 of the contract.

A We had no agreement with the union but we were proceeding to do some of this work, but we were starting -- I hate to repeat myself so much -- but the first thing we were doing was to work out your standard operating procedures, and then from there, you get into a lot of these factors that Garber mentioned in his very, very good description of job evaluation.

THE COURT: I think you have established your point.

Q How many years had you been involved in this program you say you were working on?

MR. AUERBACH: I don't recall that he said he was working on. He said "we" were working on.

MR. MOSS: Oh, the company was working on. For

heaven's sake.

A We hired the first industrial engineer to head up that department, I would guess, about five years previous to the closing of the plant. Then we were recruiting other industrial engineers.

This particular program was being performed, I would say, possibly -- although this first man was there five years, I think, I'm only depending on my memory as to how long he was there -- but I would say we were working on this particular program between possibly one year -- I know we started out on some office jobs to see how the thing would work out.

Q Am I correct that those were non-union jobs?

A Yes.

THE COURT: I think you have developed this subject matter.

Go on to something else.

MR. MOSS: It's been a long time, I admit.

Q In the course of the negotiations you had for the company with the union prior to 1963, did the company ever seek the approval of the union in negotiations for an overall job evaluation at the Conshohocken plant free of the restrictions of Section 807?

A No, we didn't.

Q Yesterday, you indicated that your labor relations at the plant had always been very fine prior to the advent of Mr. Clairmont.

A You say I indicated that they were very fine? I think you are taking a little poetic view. I don't think I said very fine.

Q What did you say?

A Our relationships were satisfactory and we got along well together, but there were a lot of things that would come up that I would not say we got along very fine on.

Q You said that in some of the negotiations, you had knock-down struggles with the union.

A Yes.

Q What were they about?

A Well, take one for instance, the matter of outside contractors performing -- you know what I'm talking about.

THE COURT: I remember that.

A That we insisted that we be -- it was our right to bring outside contractors in to work on the installation of machinery and, well, particularly installation of machinery, but they were brought in for other purposes, too.

For instance, if there was a lot of pipe fitting work involved, and we only had one or two pipe fitters, we

would have to get a few more pipe fitters and bring them in to work on contract.

We had in connection with that some real knock-down, drag-out discussions about that particular item.

Q How did it come out in the end?

A As I recall, there was a compromise of some kind worked out, but I forget what the compromise was about.

We never got to the point where we were not allowed to bring any outside contractors in, but I forget where the compromise took place.

Q Do you remember any other knock-down fights with the union in negotiations over the years?

A Well, we had one about wages, I remember.

Q Tell me about that.

Q We attempted to resist a wage increase that year. It was only 3 cents, which might sound very trivial today, but in those days a 3 cent wage increase meant a whole lot more than it does in today's market.

I know we tried to resist their demands. The industry had already granted this 3 cents. We tried to resist it. We held the line for a good while. We finally got to the point where we were offering 2 cents instead of 3 cents.

We had quite a battle, you might say, verbal

battle over that. We finally gave in and gave the 3 cents.

Q When would you say that was?

A I would guess that would be about 1959 or somewheres in there.

Q What was the basis for your contention that you should be entitled to something different from the big four?

A I can't remember what reasons we used but I know we used -- we gave several reasons why we didn't think that we should be expected to give that 3 cents, but after twelve, thirteen years, I can't remember what the reasons were that we gave.

Q Could I refresh your recollection that the reason might have been that your profits were dropping sharply between 1958 and 1959?

A I don't know. I don't know whether they were or not.

Q You don't know whether that was the reason?

A No, I don't know. We had a reason. We could not go in there without some reason.

THE COURT: They didn't think much of the reason?

THE WITNESS: No, they didn't.

Q You gave in on it?

A Yes, sir.

Q You testified yesterday, I believe, about the length of time that you used to negotiate. You said that you never gave notice of wanting to amend any contract.

A As far as I can recall, I don't remember the company ever giving a notice to the union of wanting to amend the contract.

Q You considered Mr. Clairmont's or Mr. Heinrich's giving of such a notice in 1963 to be highly unorthodox?

MR. AUERBACH: He didn't say that.

A I don't think I said unorthodox. I said unusual.

Q Was that because you were always willing, as a company, to allow the collective bargaining agreement you had to continue in existence so you didn't want any changes?

A No, sir. We wanted changes every time we negotiated a contract.

Q Am I correct that the contract which you had with the union provided that it would continue automatically for an additional year if negotiations were not commenced within 60 days to make changes in the contract?

A We always expected and knew that the union was going to give us a re-opening notice.

Q That was not what I asked you. I asked you if

the contract to your recollection, provided --

THE COURT: I take judicial notice that the contract so provides. He gave you his explanation, regardless of that provision, why they didn't give notice.

Q Are you familiar with the provision of the National Labor Relations Act which requires giving of 60 days' advance notice --

THE COURT: He said he knew that was so. The reason he didn't give notice --

MR. MOSS: I don't believe he testified yesterday that he knew that if you wanted to amend the contact, you had to give notice ahead of time.

THE COURT: I'll take judicial notice of that.

MR. MOSS: That he knew that?

THE COURT: Yes. It was clear to me from his testimony that he knew that. Whether he actually said it or not, I don't know. But he said that he knew the union would always give notice. Whether that is wise bargaining procedure or not is open for argument.

Q In 1963, did you know before the negotiations began that Mr. Clairmont believed that the company should recommend changes in the present working conditions?

A Would you mind repeating that? It is sort of long.

Q Did you know in 1963, prior to the sending of this notice which you were shown by your counsel yesterday, that Mr. Clairmont thought that the company in 1963 should actively seek substantial changes in the contract?

A I believe I knew -- I don't know -- I guess you could say substantial changes. I knew he was going to seek changes because he had me prepare this survey of so-called fringe benefits and other items that the pattern of the industry and the idea of preparing that survey was to pick out items that he thought we ought to try to get into a revised agreement.

Q In your negotiations prior to 1963, you described yesterday, I believe, the fact that you would get 60 days' notice from the union that they wanted to amend the contract.

A Yes.

Q Did I understand your testimony to be that then you would negotiate for 60 days, two months, at which time you would come out with a contract?

A Yes. Of course the frequency of the negotiations all depended upon the number of issues involved. Sometimes-- you are talking about re-opening of the entire working agreement, I suppose, as opposed to possibly re-opening on wages alone?

Q I'm talking about at the end of every two-year

contract, 1959 and 1961, and 1957, what your testimony is, about how long it took you to negotiate a new contract with the union.

A I don't think we ever rewrote or revised an agreement without permitting the former agreement to expire in point of time.

However, a lot depended upon the number of issues that had to be resolved. Sometimes you took quite a few meetings during that 60-day period in order to resolve your differences.

Other times you might be able to resolve them without too much discussion or negotiation, and you might during the 60-day period only have three or four meetings, but you always permitted your current agreement to expire on the expiration date and then start over with the new one on the effective date.

I don't know that we ever advanced the effective date of our revised agreement.

THE COURT: Did you ever have an occasion when you had not met the deadline, didn't have an agreement ready by the time the 60 days were up?

A I can't remember. There might have been. There might have been a mutual agreement that we would continue for, say, a period of another 10 days or something like that.

I don't know. I can't remember.

Q Let me read you from page 192 of the transcript of Mr. Hess' testimony in which we were discussing with him how serious the negotiations were that they used to have with you before the Clairmont days, and his answer was:

"We would go in and we would discuss it and we would be in there, I would say maybe a week, and we came out with everything."

Do you accept that as a ~~general~~ generally accurate description of the course of your negotiation prior to Mr. Clairmont?

A Can you define what "with everything" meant in that statement?

Q I can't.

A I would say that is not correct then, unless you tell me what coming out with everything meant. I can't subscribe to that.

THE COURT: Assuming "with everything" meant with everything agreed upon.

THE WITNESS: That would be accurate to the extent the two parties would have traded.

THE COURT: In other words, he said there was a week of negotiation.

THE WITNESS: I interpreted that when it was read

by Mr. Moss just now to mean they came outwith everything they went in for.

THE COURT: I understand that.

THE WITNESS: They didn't come out, I don't think, with everything.

THE COURT: Interpreting it the way I interpret it, his statement was that the negotiations lasted two weeks on the average.

Does that seem accurate?

THE WITNESS: Two weeks on the average? Is that what that said?

THE COURT: I'm asking you. What would you say?

THE WITNESS: There, again, it all depended on the number of issues.

THE COURT: Over the years.

THE WITNESS: We could get a 60-day notice and our relationships were such that they might tell us in advance what they were going to bring up. We could tell them in advance what we were going to bring up. So it would give us both a chance to prepare our defense or offense, as it might be, and although it was a 60-day notice, we might not have sat down and had our first negotiation meeting until maybe two or three days prior to the expiration of the contract. A lot depended on what the issues were.

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Q In January of the early part of 1964, did you testify before a referee in the Unemployment Compensation case in Pennsylvania?

A January of 1964?

Q Yes. January 22 and January 23, 1964.

A We had a lot of meetings with them. Did I testify? I don't recall --

THE COURT: Show him his testimony.

A I know we had quite a battle.

Q Here is a record in the Superior Court of Pennsylvania.

Does that refresh your recollection? Testimony, Joseph J. Conway, Personal Direct Examination.

THE COURT: Read what it says you said there and see if it refreshes your recollection that you ever said it.

Q Do you remember Mr. Burnstein for the company and Mr. Goldberger for the employees?

A Yes. I remember. He was a big fellow. I remember he's a great big bird. I remember him now that you remind me of it.

When was this? January 22, 23. This was just before I left.

Q Do you remember testifying on that occasion that the record time you had in negotiating a contract with the

union was 15 minutes?

A No, I don't remember anything like that. Fifteen minutes?

Q Let me read you this question and answer.

THE COURT: Give him the page.

MR. MOSS: Page 247a.

(Witness referred to exhibit.)

A This is quite long.

Q I'm not terribly interested to have you read the whole testimony. I was only interested in that question and answer.

MR. MOSS: You may read as much as you like, all 249 pages. I'm interested in only one question and answer.

MR. AUERBACH: I don't think the witness ought to be made to feel he is cut short.

A This reads -- as a matter of fact, I think the questioner:

"Question: The parties were proud of the record being broken in negotiations lasting 15 minutes whereby the big four contract was handed to the company and was accepted. Wasn't that record 15 minutes?

"Answer: That was a sign of good negotiating on the side of both parties."

This could not have referred to a general working agreement. We never completed a negotiation on a general working agreement in 15 minutes.

Q You would not dispute you were asked that question and gave that answer?

A It is here in print. I can't remember it.

Q That is all.

A It certainly didn't mean that we negotiated a working agreement in 15 minutes. Boy, that would be the world's record.

THE COURT: The fact it is there in print does not necessarily mean you said it.

THE WITNESS: You can put it in whatever context you want to. After all, I was testifying my heart out right there in the interest of the company, my employer, and I was doing my best to try to save the employer from being accused of having locked out the employees.

Sometimes you do some things like lawyers do, I think, that is you feel in the best interest of your employer, and that is all that testimony is. All that testimony was being given by me in the best interest of my employer.

So I suppose -- 15 minutes? That didn't mean a contract. I can see where possibly there was nothing but

a general wage increase and it had been granted by all of the big companies, and maybe some of the smaller companies, so there was nothing to be negotiated.

We were willing to go along with the industry pattern. All we had to do was write up a very short agreement, maybe a paragraph for that matter, and that is evidently what that referred to. That didn't refer to the negotiation of an entire working agreement.

Q You just said that this was testimony which was given, of course, in the best interest of the employer.

That was sworn testimony, was it not?

A I suppose so.

Q You were not suggesting by that that because you were testifying in the best interest of your employer, that you were not truthfully testifying as you saw it at the time?

A No. That was the truth as I saw it at the time. I just got through saying why I must have said, that is an indication of good negotiating because it must have been something like a general wage increase and nothing else.

There were wage re-opening clauses in some of these contracts and usually the big four fellows, the big four unions, would issue a wage re-opening notice to their companies and the thing would all be negotiated by the big four and a number of smaller companies, General Tire, and so

forth, so there was nothing left for us to do when we had already indicated verbally that it was our intention to follow the pattern.

All you had to do was go in there and write -- in fact, sometimes we had the paragraph written in advance when we went into the meeting and all it took was 15 minutes to sign it.

Q Am I correct, in the time you were in charge of labor relations up until 1963, there never was a strike involving the negotiation of a new collective bargaining agreement?

A That's correct.

Q The company never pressed any issue to the point of a strike?

A We had them in the Republic plant but that's different.

Q Did you have any general instructions from Mr. Garthwaite or any of the management that you were not to allow any strike at the plant?

A No.

Q You testified yesterday that sometime in, I believe you said, early in 1962, you were informed by Mr. Garthwaite that somebody named Kahn was buying stock in the company, right?

A Right.

Q And that Mr. Garthwaite expressed displeasure with Mr. Kahn's reputation as a businessman, am I correct?

A According to my recollection.

Q You said that thereafter, sometime later, you were informed in this executive committee that you had, that Mr. Garthwaite learned that another person, Mr. Clairmont, was also buying stock in the company.

Did Mr. Garthwaite have anything to say to you at this time about his views of the reputation of Mr. Clairmont?

A I don't believe he spoke about his reputation. I think he simply told us the name, but I don't recall that he brought up any facts with respect to Mr. Clairmont's experience or background or qualifications or anything else.

As far as I know, he didn't. I can't remember. I think he just mentioned the fact that Mr. Clairmont was starting to buy stock also and he indicated the fact that he seemed to feel as though he would rather have Mr. Clairmont buy it than Mr. Kahn.

Q You testified that eventually in the spring of 1962, Mr. Clairmont or Mr. Garthwaite told you that Mr. Clairmont had acquired about 20 percent of the stock and wanted a seat on the board of directors.

A Yes, sir.

Q Do you know whether at that time Mr. Clairmont himself became a member of the board or just had a representative on the board?

A I don't remember, Mr. Moss. There was a fellow by the name of Hoffman who, I believe, got on the board, and I'm not sure whether he was associated with Mr. Clairmont or not.

THE COURT: Is this particularly relevant?

MR. MOSS: No. I was leading up to when Mr. Clairmont himself became particularly active.

For the record, Mr. Hoffman was Mr. Clairmont's representative in the early spring. Mr. Clairmont became a member of the board in July.

THE WITNESS: My guess was right.

Q You testified about your becoming involved at sometime in some proposed amendments to the pension and welfare agreement. I can't recall precisely what your testimony was of when you first became involved in that.

Would you fix it for me?

A I don't quite understand what you want me to say, what you are asking me to answer.

Q I don't want to put words in your mouth. I understood you to say yesterday that sometime in late summer or fall of 1962, you became involved in some

proposals to change the pension agreement.

I wanted to make sure I was not misquoting you as to the time you thought you first became involved in that.

A I think that was in the fall of 1962. Mr. Clairmont started to become active in, you might say, the day-to-day operation, I would guess, sometime along, maybe, August or September of 1962.

It is hard to remember all of these dates after such a long period.

Q Let me show you Exhibit 88-A, I believe it is, which was one of the documents shown to you by Mr. Auerbach yesterday, containing this provision.

A Yes.

Q I note at the top it is dated July 2nd. Is that by any chance your handwriting?

A No, sir.

Q Does that refresh your recollection that that proposal was made sometime in the summer of 1962?

A If that date July 2nd is correct, I guess it does. But I wanted to see, was it ever signed?

Q No, sir.

A Was this the company's first proposal for a change in the pension-welfare agreement?

Q I think so but I'm not sure. Let's look at the other one. I think your counsel showed you 89-A.

MR. AUERBACH: I would like to correct the record. I don't think that I am his counsel.

MR. MOSS: Mr. Auerbach, excuse me.

THE COURT: I noticed that.

Q July 3rd. You were shown that the other day with reference to item 6 which says -- discussing that.

A That's right. I said yesterday in response to a question by Mr. Auerbach that after I saw the proposal to make these two changes -- one about the termination due to strike and one about limiting the responsibility to the assets of the fund -- I don't know whether I'm ahead of myself or not, I don't know whether -- I don't think we were funding yet at that time. I think that came later.

I testified that when I saw these two proposals, that is when I started to get a little concerned about the future of the company because there were being proposed some items that I was sure didn't appear in any other tire company's agreements.

Q Do you think that those items that were being proposed would have been beneficial to the company had they been adopted?

A Yes. They would have been beneficial to the

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company.

Q Do you think that it was an absolute ~~omission~~ prohibition, in proposing them to the union, that they didn't appear in any other contract?

A I would not say that. It started me thinking after the publicity which had been given to Mr. Clairmont in Fortune Magazine and in a chapter in a book -- the title of which I don't remember -- after still having that in my mind, then I see proposals like this coming, following up the unfavorable publication, publicity, it was only natural for me to wonder whether this was going to be the beginning of further demands pointing towards the possibility of closing the plant down.

Q This related to a strike, right?

A I beg your pardon?

Q This related to a strike, these clauses?

A Yes.

Q It didn't relate to closing the plant down?

A There is another clause here that did. It was when I saw the two proposals, one on the strike and the other on the plant closing down, discontinuance of operations, that I became concerned after seeing those two.

Q That second proposal, was that in the event of discontinuance of operations that any responsibility to the

pension fund would be paid out of only the money that was not in the pension fund?

A I believe so.

Q Tell me how you got these proposed amendments? Where did they come from?

A I would probably have to guess. At that time, there were a lot of the powers that be giving their 2 cents worth of suggestions as to how the wording of these agreements should be made.

Q Who were the powers that be at that time?

A Mr. Clairmont, Mr. Hoffman, Mr. Van Anda, Mr. Garthwaite, they all had their fingers in this.

Q How much of your fingers was in this?

A I was just a small-fry. I was not calling any shots.

Q I didn't say you were, but small-frys sometimes have their fingers smally in pies.

Were you consulted about it?

A I was not consulted, no.

Q What were you, if you don't like the word "consulted"?

A I was privy to some of their discussions.

Q What were those discussions?

A The discussions were with respect to the wording

of the changes -- I should not say it -- changes that were desired to be made.

THE COURT: Is that Garthwaite senior or junior?

THE WITNESS: Junior.

THE COURT: He is dead?

THE WITNESS: Yes.

THE COURT: Garthwaite senior is alive?

THE WITNESS: As far as I know.

Q Was anything said in the meetings that you attended about why whoever was proposing these amendments was proposing them?

A Not that I know of.

Q What was said at the meetings?

A I don't recall what was said in the meetings. Really, they were not meetings in the strict sense of the word of a meeting. They were -- perhaps Mr. Van Anda would be in his office in New York and Mr. Hoffman would be in his office in New York, and Mr. Clairmont possibly in his office in New York, Mr. Garthwaite in Conshohocken, they would all be on the telephone discussing -- it seems like everybody was discussing or suggesting wording that evidently Mr. Clairmont wanted.

Q I understood you to say that you were in some of these discussions.

A There were a few of them. I was.

Q Were you in any discussions at which it was discussed as to why all these bigwigs in the company were trying to work out proper wording for this proposal?

A No. Not why they were.

THE COURT: Can you remember anything that Mr. Garthwaite said in any of these discussions?

THE WITNESS: Mr. Garthwaite didn't say very much. I can't remember anything he did say. He relied mostly on Mr. Van Anda.

THE COURT: Mr. Van Anda was in New York?

THE WITNESS: As a rule, I would be sitting in Mr. Garthwaite's office with him and he would be on the telephone.

I can recall one meeting where I think -- I'm not sure -- but I think all of these principals that I mentioned attended and I was there more or less as a secretary to take down notes -- not notes of a meeting but notes of the proposed clauses that the union was going to be asked to accept. I can only remember one such meeting.

THE COURT: Do you remember anything that was said at that meeting as to why these things were being done?

THE WITNESS: I don't remember anything as to why, your Honor, except that Mr. Clairmont said that we had

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to protect the company's finances better than they were protected at that time.

THE COURT: Did Mr. Garthwaite say anything in response to the question as to why?

THE WITNESS: He didn't say much. He was pretty much a figurehead at that time.

THE COURT: He was involved in these discussions?

THE WITNESS: Yes, he was involved. Of course -- I don't know whether he was the chairman of the board or president at the time. He was one or the other, I suppose. And, naturally, he was involved, but he was not a leading factor.

BY MR. MOSS:

Q Mr. Clairmont was not chairman then, was he?

A I don't know.

THE COURT: I would think it is a question of wherever MacDonald sits is the head of the table.

Q You testified yesterday that you were handed these amendments to negotiate with the union, wasn't that your testimony?

THE COURT: Pick a good stopping point in the next couple of minutes, Mr. Moss.

MR. MOSS: Yes, sir.

A I believe that they were handed to me but I

think I was asked yesterday who handed them to me and I don't think I can recall who did hand them to me.

Q What did the person who handed them to you say toyou to do about them?

A To take them and present them to the union.

Q Didn't they tell you any way in which to support the proposals?

A No, I don't think they did. In other words, it was simplely the same reason as I had already stated, that Mr. Clairmont felt they were necessary in order to protect the financial interests of the company and the financial interests of the officers and directors and stockholders and so forth.

Q Did you say to the person who handed them to you, this is outrageous, it does not appear in any other contract, I'll never be able to do this?

A No, sir. You don't say things like that to Mr. Clairmont.

Q Do you say it to anybody? Did you ever say that sort of thing to Mr. Garthwaite?

A I doubt it.

Q You just accepted this piece of paper knowing nothing more than Mr. Clairmont said it was necessary and you were told to go and get it, is that right?

A Yes.

MR. MOSS: We can stop here, your Honor.

THE COURT: How much longer do you think you have?

MR. MOSS: Hours; maybe days.

THE COURT: Try to confine it. I don't think that most of it is relevant.

MR. MOSS: Your Honor, I think that this witness has been called after nine months. He testified here yesterday that he didn't know anything about these things. He just got handed things and he went in knowing nothing about ~~that~~ them.

We have the whole course of the negotiations to go through to show his participation in the negotiations, to pin him down on the record as to when he did or did not talk with Mr. Clairmont.

He said yesterday he never talked to him at all.

THE WITNESS: Wait a minute. I didn't say that.

MR. MOSS: I really have to --

THE WITNESS: I did not say I never talked to Mr. Clairmont at all, Mr. Moss. Don't -put words in my mouth.

MR. MOSS: The record will show what you said.

THE COURT: I understand. This matter may come before wiser heads and I don't want to restrict the record.

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For your guidance, let me indicate that I don't think so far this witness has proved the point for which he has been called.

My feeling at this moment is that he has not changed the conclusion to which I have already come.

MR. MOSS: May I consider that over lunch. I certainly don't wish to impose on the Court's time more than necessary to protect my client's interest.

THE COURT: I understand. I may not think so but that doesn't mean that the wiser heads may think. That is not a ruling. I'm not binding myself to that.

MR. MOSS: Thank you, your Honor.

(Luncheon recess, at 12:45 p.m.)

AFTERNOON SESSION

2:05 p.m.

J O S E P H J. C O N W A Y, resumed.

MR. MOSS: Your Honor, I have what I hope will take me not more than 20 minutes or half an hour in response to your suggestion. It may need not be as extensive as I meant it to be.

THE COURT: If I don't adhere to the tentative conclusion which I intend to announce -- I deny the motion to dismiss -- if you should decide to recall this witness, in that event, I would consider him to be the defendant's witness.

MR. MOSS: I understand, your Honor.

CROSS-EXAMINATION (Continued)

BY MR. MOSS:

Q Mr. Conway, yesterday after your testimony, I got the impression that it was your testimony that you had not been privy to any of Mr. Clairmont's views about the financial condition of the company before the negotiations began.

Was that an incorrect impression?

A I would say to a certain degree, it was incorrect in that Mr. Clairmont attended -- he requested the international union to have a meeting. I think it was in

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the fall of 1962.

I attended such a meeting in Akron, which was also attended by representatives of both the Youngstown and the Conshohocken locals and international people, and Mr. Clairmont either made a speech or read a statement in which he brought up certain matters relating to the financial aspects of the company.

Having been there, I heard that statement or whatever it was, I forget.

Q I show you what has been marked 30-A in evidence which purports to be minutes of that meeting.

Look through there and I ask you if you consider that, in substance, summariees what went on in your presence at that meeting.

A This is the Akron meeting.

(Pause)

A Do you want me to read all of this?

Q Look and see if, as far as you have gone, that is, to your best recollection, a reasonable summary of what Clairmont and Burdon and other people said at that meeting.

A I would say so.

Q Am I not correct that that dealt with problems which Clairmont felt there were under the working agreement as well as the welfare agreement?

A This is a speech of Mr. Garthwaite with respect to it. Yes. There are some statements in here that would refer to the operation of the plant in connection to a working agreement.

Q You held a follow-up meeting to that meeting which was held on November 13th in the company conference room, Exhibit 31-A.

Perhaps you would look at that, particularly the first paragraph which purports to report what you said at that meeting.

Does that refresh your recollection that in November, you had a discussion with the union representatives about problems which the company felt existed under the collective bargaining agreement?

(Pause)

A What was your question?

Q Whether that refreshes your recollection that at that meeting there was a discussion chaired by you of problems which the company claimed to have under the collective bargaining agreement, the working agreement.

A Yes, I would say so.

Q Am I correct that at that meeting, the union asked Mr. Clairmont, come to the next meeting and answer some questions for them?

A There was some meeting at which they asked him to come back. I don't remember whether that was the actual meeting or not.

Q Do you recall that to that request, you suggested it was the most ridiculous thing you ever heard, to have the chairman come in to talk to the negotiation committee?

A I do recall having said that. I don't recall that I used the word "ridiculous."

Q If the reports of the union say you said so, you said something like that?

A Something like that. As a rule, the chairman of the board, as far as I knew, does not sit in on union negotiation meetings.

Q I show you Exhibit 32-A, negotiating committee, November 16, 1962, conference room, and ask you if you will review that and see if that refreshes your recollection that Mr. Clairmont did come to that meeting under your chairmanship and whether you did not go over at that meeting complaints or rumors or fears that employees had about Mr. Clairmont.

(Pause)

A I must ask you to repeat the question after I have read it. What did you say?

Q Does that refresh your recollection that at a

meeting on that date which you chaired that Mr. Clairmont appeared and answered questions of the people about the doubts they had about his past experience, et cetera, et cetera, and discussed problems that he felt the company had with the working agreement and the pension agreement?

A Yes. I remember this meeting and the contents of these minutes.

Q After that meeting, did you speak to Mr. Clairmont further about the fears and distrusts which you say you had about him?

A I doubt it. I had fears and distrusts but I don't think I ever spoke to him about them.

THE COURT: Did you talk to anybody about them?

THE WITNESS: I didn't talk to anybody in high authority. I may have discussed it with my wife.

THE COURT: She is a high authority.

THE WITNESS: And my family and so forth. But as far as I can recall, I didn't discuss them with anybody in high authority.

Q I show you what has been marked 90-A, which purport to be minutes of April 16, 1963, Mr. Conway. I believe you were present with Mr. Clairmont and the international representative was present.

Look at that and see if that refreshes your

recollection as to that meeting.

A Without requiring the necessity of reading all of this, I suppose you mean this is the meeting where the union was proposing a production or profit sharing, production sharing program to the company?

Q Among other things.

A And Mr. Clairmont also proposed a couple of -- I don't recall whether they were called profit sharing plans, but he proposed a couple of things. I don't know whether they are all in this same set of minutes or not.

Q There was a discussion at that meeting, was there not, about the productivity of the company or lack of productivity in the company?

A I would have to check it and see.

(Pause)

A Here is a statement from Burdon, I guess, in which he states:

"Are you willing to listen to this production sharing program?

"Clairmont: Yes. Our problem is not production. I did not say that the union is responsible. I am just asking for this to make possible something that would not be possible otherwise. Those who are to blame are no longer with the company."

He states there that the problem is not production.

Q I'm talking about productivity.

A I'm going through this hurriedly. I don't see any statements from Mr. Clairmont about the productivity.

Q Let me ask you this:

Was it at that meeting that the union and the company agreed to have a joint report made as to the productivity of the company and other items which would show the company's competitive position?

A Do you know where this meeting was held?

Q Akron, I believe. Neil Barbu was there.

A I guess it was in Akron. I guess it was at this meeting where -- I don't see that discussion in here though. I tried to refresh my memory about this Barbu thing. I had very little to do with that.

I was under the impression that Mr. Clairmont had introduced Mr. Barbu to that gathering, but I inquired, I think I asked one of the fellows in your office the other day about that, or mentioned it, and one of you, I think, said that Barbu was introduced by the union.

I am not clear on that. I thought Barbu was introduced by Mr. Clairmont or the company.

Q Were you present at the meeting when it was

agreed to do this report?

A Yes, sir.

THE COURT: What part did Barbu have?

MR. MOSS: They sometimes call it Barbu report because he was present at the meeting and he was the employee of Strong-Narovec.

Q Mr. Conway, I would like to draw your attention to the testimony of Mr. George Vasco, general counsel to the URW, and I believe he was present at that meeting. He testified as follows on pages 486 and 487:

"Question: Did the union representatives indicate to Mr. Clairmont and to the other company officials that they would cooperate at any reasonable form of increasing productivity or efficiency, production efficiency?

"Answer: Yes. The union representatives most certainly indicated that and, further, the international union through Mr. Burdon proposed that Mr. Barbu conduct a study to determine the problems that this employer was having in his business."

A According to that, he must have been suggested by the union.

THE COURT: You have no clear recollection one way or the other?

THE WITNESS: I have been trying to refresh my memory, but I have not been able to. Offhand, I thought that he was suggested by Mr. Clairmont but evidently I was wrong in my understanding.

Q Did you ever see a copy of the Barbu report?

A I saw one rather briefly when the Barbu -- when the Barbu people came in to the Conshohocken plant to make their survey which was agreed to, I believe the expense to be shared fifty-fifty between the company and the union.

They worked -- I was not interviewed at all in connection with that report. In fact, when the results of the report were issued, several other people were furnished a copy of it and I felt a little hurt because I didn't get one until several days later. Then I got it.

I don't remember how -- the report was mailed out to the international -- whether the report was mailed out to the international or whether there was a meeting or what, I'm not clear with respect to Strong-Narovec.

I was at that meeting when it was agreed to but I was not involved in any of their interviews or analyses of the problems that they were attempting to develop.

Q Did you agree or disagree with the conclusions of the report?

A Well, from what I recall, I think the number one

finding of Strong-Narovec was the big problem: More sales. Also, as I recall, they had a statement purporting to show cost per pound, I think it was, of production, and the 1963 figures, if I recall, did not show up well but my feeling with respect to that was it was because of all these layoffs that were being made.

Naturally, your entire production picture was distorted and disturbed and you could not expect to have good costs with such a condition existing in your plant.

As I say, I was not involved in that Strong-Narovec report or in their investigation. The people who conducted it, I don't remember how many there were there. I don't think there were very many. I had nothing to do with it.

Q Did I understand you to tell me the other day, you did not give any credence to that report because you believed that Mr. Barbu had been chosen by Mr.Clairmont to make it?

A Yes. I think I did make that statement. I assumed it was a one-sided statement, report, but, as I say, I'm not familiar enough. I just gave you my own feeling about that. I'm not familiar enough. I didn't know enough about that Strong-Narovec survey to really comment one way or the other.

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Q Mr. Conway, by April, at least, the date of that last meeting, you were generally aware of Mr. Clairmont's views about the condition of the company and the changes that he felt needed to be made in the working agreement, am I right?

A I was generally aware of his views but I was not aware of the various changes that he wanted to have made in the working agreement.

Q You said that the time came when you began to prepare for the working agreement negotiations.

A Yes, sir.

Q What discussions, if any, did you have with anybody about the position which the company was going to take at the negotiations?

A At that time, I don't think I had any discussions with anybody because I was involved in procuring copies of quite a number of other companies' working agreements. I guess I must have accumulated possibly fifteen to twenty working agreements of other companies, and as I received them, I was tabulating the different clauses from each one and I don't believe at that time that I was in any discussion with anybody about what Lee was going to propose to the union, because I felt that I was preparing this data for Mr. Clairmont, and after he had had a chance to study it,

then I expected that he would come in with his ideas about the proposals that we should make when we opened, started the negotiations.

Q After you prepared this analysis of these contracts, did you discuss that with Mr. Clairmont?

A I think I did. I think I brought -- as I recall, I had a big, long columnar sheet, more than one, and I think he was in Conshohocken one day, and I brought them over to him and I went over them with him explaining things that he might not understand.

Q Did he have any particular interest in any particular contracts or provisions?

A Well, what he was doing, he was picking out the clauses in various contracts that he seemed to feel were better than ours.

Q He discussed them with you?

A I beg your pardon?

Q Did he discuss them with you?

A He just simply told me, "Here is a better one, and here is a better one. We ought to try to get this one and perhaps we ought to get that one."

Q What did you say to him?

A I think I said, "Of course you can't get the best -- pick out the best of everything there is. That would

be pr[illegible]y nice if you could do that. I'm afraid we would not be able to do that."

Q You could pick them out but you might not get them?

A You could pick them out and propose them. In fact, we did some of that. We have done that other years.

Q The contract negotiations eventually began?

A Yes.

Q You testified yesterday, if I recall, that you just were handed the list of company proposals, maybe the morning of the day it began.

A Maybe. I don't remember just when I got them. I think I testified I don't remember exactly who it was that gave them to me.

Q Didn't you have any conversation with Mr. Clairmont or Mr. Heinrich about the positions you were going to take in support of those proposals?

A I guess there was some discussion. I don't remember. I don't remember what we discussed. When I saw that list, that 36-page long list, I was awe stricken. I didn't know what to think.

I realized that I was -- probably I was going to be the one that was going to be responsible to try to negotiate those 36 pages full of proposals.

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Q I show you, Mr. Conway, Exhibit 99-A of the minutes of the first negotiating session of May 29, 1963.

I show you 127-A of the negotiations of May 31, Exhibit 128 of the negotiations of June 7, Exhibit 129-A of the negotiations of June 11, Exhibit 130-A of the negotiations of June 14, 134-A, the negotiations of June 19, 131-A, the negotiations of June 21, 132-A, the negotiations of June 24, Exhibit 133-A, the negotiations of June 26, Exhibit 135-A, the negotiations of June 27, Exhibit 100-A, negotiations of June 28, 101-A, July 3; 103-A, negotiations of July 5, 137-A, negotiations of July 11, Exhibit 35-A, the negotiations of July 16, Exhibit 36-A, which appears to record a telephone conversation between Mr. Hess and you about the work rules, Exhibit 37-A, the negotiations of July 30, 1963, Exhibit 38-A of the negotiations of August 6, 1963, Exhibit 39-A, the negotiations of August 15, 1963, Exhibit 40-A, the negotiations of September 4, 1963, Exhibit 41-A, the negotiations of September 19, 1963, and I wonder if you could just take a brief look through some of those and see if you consider that they adequately represent your participation in the negotiations conducted at those sessions.

A A brief look?

THE COURT: We will have a ten-minute recess

while he goes through that.

(Short recess.)

THE WITNESS: As I understand, your Honor, I believe Mr. Moss said these are union minutes, and I have never seen these before. I don't know what is in here.

THE COURT: Just go through them. Don't read them carefully but as you go through them, see if they seem to you to reflect what happened.

If, in general, they seem to reflect what happened, we can assume that practically they are all accurate.

MR. AUERBACH: I suggest, your Honor, that maybe the witness needs a little more than ten minutes.

THE COURT: If he needs more than ten minutes, he can ask for it.

In other words, no one is askingyou whether anything there happened. All they are asking you is does it seem to you in general to reflect what happened. Skim through it.

(Short recess.)

THE COURT: I understand, Mr. Conway, you are not being asked to certify to the accuracy of those things. In general, do they strike you, roughly, as what happened?

THE WITNESS: Yes, they do.

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BY MR. MOSS:

Q Mr. Conway, yesterday, you testified that you considered that there were two and perhaps three key matters that you thought were most contentious, one being wages and one being job evaluation proposal and the third was management rights.

I believe you testified that no change was made in the wage proposal until the posting of the new working conditions.

A I believe I testified to that effect because that was my understanding. I think we held the 25 percent demand and didn't back off of it in any way until the work rules of July 18th.

Q If these minutes which you have just looked through show that on July 11th, you offered to drop the wage decrease from 25 to 20 percent, would you believe that that was accurate?

A I would like the opportunity to see those minutes. I don't remember that that was done.

Q You also testified as to management rights. The negotiations continued after the strike, did they not?

A Yes. I think there were one or two meetings after the strike.

Q I show you what has been marked as Exhibit 40-A,

negotiation meeting of September 4, 1963.

I draw your attention to a statement by Mr. Garber:

"Management rights more or less agreed as in old contract and grievance time of 74 hours tentatively okay."

Does that refresh your recollection that a management rights clause was eventually successfully negotiated?

A In my testimony yesterday, I did not say that the company had not offered to change its proposal on management rights. I was citing the management rights clause as it appeared in the company's original proposal because at that time, I stated that that was one of the items that I thought was ridiculous, and you could never expect to get anything like that if you were going to live with a union.

I did not say that the management rights clause was not revised.

Q It turns out now, the negotiations ended up with an agreement on management rights tentatively.

A That is what this says.

Q I call your attention to Exhibit 138-A, page 3, item 4, and I ask you if that does not indicate a tentative--a proposal or conditional proposal by you, among other items, to drop the 25 percent to 20 percent made on July 11, 1968,

(Pause)

A I'll have to see what number 2 and number 3 -- this appears to be an attempt to settle two unresolved issues, number 2 and number 3 issues, whatever they are, in return for which the company would agree to reduce their wage reduction figure from 25 to 20 percent.

I don't see number 3 and number 2 items.

Q Number 1 and number 2 are right on the page preceding (indicating).

A Yes. That is 2 and 3.

2: The company agrees to eliminate the following jobs from the proposed list of key jobs so that all seniority provisions will apply as they do now: Inspector Department 25 often classified A Department 29.

In other words, the company proposed that they would drop these two classifications from the requested list of key jobs with the understanding, no doubt, that the union would accept the list of key jobs other than these two.

The company will agree that once it has reached an average of 5,000 tires per day instead of 6,000 as proposed and is maintaining such level for 6 months, it will retain in the key job capital only that of tire builders.

In other words, I had not remembered this particular attempt to trade. The company was attempting to trade to acquire the list of key jobs with two exceptions, and also attempting to acquire the increased production for a period of six months after which the company proposed that they would drop all key job requirements except tire builders in return for which the company states that they would be willing to reduce the 25 figure to 20 percent figure.

It is there. I didn't remember all of that.

Q Do you recollect that at a subsequent meeting, before the July 16th work rules were posted, the company unconditionally reduced its wage production demands to 20 percent?

A No, I don't. When was that?

Q I believe it was at the meeting of July 12th. There was testimony that it was at the meeting of July 12th. The union has produced no minutes of that meeting.

Tell me about Dunlop. Were you aware of the situation that Dunlop had a wage reduction at the time you were negotiating this contract?

A Dunlop had a pecularlar situation in that they had a number of jobs that were actually out of line with the industry. They were paying higher wages to certain job classification employees than the industry.

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In fact, I think some of the job categories involved at that time were paying the highest rates in the industry.

Dunlop was anxious to try to correct that situation. They had their working agreement -- their working agreement was coming up in 6 months.

They got the union to agree to a revision in the rates for certain job classifications realizing that it was only going to extend for the 6-month period until the contract was out.

With that background, they did, the union did accept this 10 cents an hour wage reduction but it didn't affect the overall earnings of the plant in that these job categories that were out of line were the ones that they were interested in getting back in line, so at the end of 6 months' time, when they negotiated in a new contract, they revised their proposals at that time to get in line with the industry, at least bring down to what most of their major competitors were paying.

Q You knew about that Dunlop situation in the course of these negotiations, right?

A Yes.

Q You sought to use that as a tool to obtain some kind of wage reduction from the union inthis case, did you

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or not it was a valid plan, was a proposal which he said would restore to the employees anything that they would lose under the wage reduction, am I right?

A He said that.

THE COURT: That was his claim?

THE WITNESS: Yes.

Q Finally --

A However, the 25 percent wage reduction was such an immense reduction that I don't think the union fellows felt that any production sharing, profit sharing plan, could offset what they considered was a huge wage reduction.

THE COURT: That is obvious to me.

Q Finally, on the negotiations, am I not correct that at various meetings before the new work rules were posted on July 16th, the company had revised its job evaluation proposal so as to provide for a professional expert in job evaluation to be mutually selected by both parties whose agreement, decision about rates, was to be final?

A I don't think you have that quite right. It is in those work rules. We can read the exact way it was proposed.

Q Let's talk not about the work rules but the company's proposals at various times before the work rules were posted. Whatever it says in those company proposals are what your proposals were. The date of those minutes,

with respect to job evaluation, is substantially correct?

A I cannot answer that. I have not read all those minutes.

THE COURT: As far as you are concerned, everything you did read struck you as substantially correct?

THE WITNESS: With respect to job evaluation, the job evaluation proposal, the company did make several changes. Every change that was made still did not provide for a bilateral program. Anything that didn't give the union the right to participate in the whole program was always rejected by the union.

THE COURT: I don't think you need go any further on this point.

MR. MOSS: I agree.

Q A couple of more things, Mr. Conway.

You testified yesterday, I believe, that you had nothing to do with the formationof the new terms and conditions.

A I don't remember having had anything to do with them.

Q Didn't you have any conversation with Mr. Heinrichor Mr. Clairmont about what conditions they might pose if they decided you could not work under the old agreement any longer?

A It seems to me that those July 18 work rules were promulgated in Mr. Clairmont's office or by Mr. Clairmont. I don't even remember Mr. Heinrich bein g involved in this, in preparing those July 18 rules.

Q You testified yesterday, I believe, that when you saw those work rules, that you were sure they would not be acceptable to the union.

A I was practically sure because it still had that 20 percent wage reduction in it and it still had a unilateral job evaluation job program.

Q At the time you presented those work rules, was it your view that that would perpetrate or start or trigger a work stoppage?

A I was afraid it would.

Q You were afraid it would?

A Because by that time, the union was pretty hot.

Q I draw your attention to your testimony at that same Unemployment Compensation hearing in January of 1964, in which I would like you to read the testimony which begins here," you knew there would be a work stoppage with the imposition of terms and conditions, didn't you," through at least the end of the middle of the preceding page.

THE COURT: I recollect that Mr. Clairmont thought it would produce a work stoppage.

MR. MOSS: I think he probably did.

THE COURT: He thought it was high time they got out on the picket line, or something to that effect.

A I guess I made a mistake in not resigning from the company before I got involved in this because I was trying my best to help the company to defeat this action.

Q Which was to provide unemployment compensation for the employees?

A Yes. The question was, as I recall it here, were the employees locked out or did they strike?

Q Would you just tell me whether you were asked those questions and gave those answers ending up with the fact that you did not expect the posting of the work rules to precipitate a work stoppage:

A. "Question: You knew there would be a work stoppage with the imposition of those terms and conditions?

"Answer: I don't know.

"Question: But you felt reasonably sure it would occur?

"Answer: I still was not sure when we proposed this on the 16th we still had about one and two-thirds days, speaking of shifts, before the new work rules, for them to become effective.

"I still had hopes we could continue negotiations

through the afternoon of the 16th and all day of the 17th in the hope, in a chance, that maybe we could still get together and come up with something which we could live with before these work rules were scheduled to go into effect 7:00 a.m. on the 18th.

"I still had hopes and I maintained those hopes right to the very end, although --"

Q Finish reading, please.

A "Question: I ask you again, regardless, whether or not you anticipated, based on your experience and what had transpired during the course of negotiations, that a work stoppage would occur?

"Answer: No, I did not."

MR. MOSS: Thank you.

THE COURT: My only question is, did you say those things at that time?

THE WITNESS: I must have. That is an official document.

MR. MOSS: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. AUERBACH:

Q Mr. Conway, I would like to get back to tread tuber. I believe you testified that at the time of the

negotiations, you didn't consider the tread tuber an important matter.

At the time of the negotiations, were you aware, did you have any idea how long the head, or whatever you call it, of the tread tuber had been sitting in the warehouse?

A It was there at the time of the negotiations. That is roughly June 1st or so. It had been sitting there a good while. I'm not sure but it seemed to me it had been sitting there two or three months at least.

I can't remember. I just have a picture of it being pretty well covered with dust. That is why I'm trying to figure.

Q Was it your recollection that the part that was in there, the head, or whatever it is called, had been ordered during the Garthwaite regime?

A Yes. I believe so. That is early 1963? I imagine it was.

Q I'm now referring to Exhibit 99-A. I'll show this to you but I would like to read it first.

This was a meeting, negotiations, apparently the first session at which Mr. Clairmont, according to the union minutes, Mr. Heinrich, Mr. Conway, and Mr. Barkett were present. Mr. Barkett stated among other things:

"Off standards is hurting us plenty. We know that treads is one of our biggest problems but you people should only receive an allowance for the short tread, not the whole tire."

Would it be fair to say that by Mr. Barkett for the company starting off negotiations by saying --

MR. MOSS: Your Honor, I object to putting this speculation into the witness' mouth.

Why doesn't Mr. Auerbach ask him a direct question about that instead of, would it be fair to say, et cetera. That is hardly proper examination of his own witness.

THE COURT: He is your witness.

MR. AUERBACH: I'll rephrase the question.

Q Mr. Conway, was Mr. Barkett for the company or was the company in effect asking the union or the people working on tires to take less money?

THE COURT: That is obvious.

Q Was the problem with the treads and the old tread tuber the employees' fault?

A No.

Q If you had known or been told that there would be a brand new twin tread tuber scheduled to go into operation or be available for production in July, the same

month when the new contract was supposed to be in effect, would there be any valid reason for asking the people to reduce their off-standards payments?

A I should not think so because as soon as you got the new one operating, there should not have been any off-standards.

Q In your opinion, knowing the situation as it existed then and the feelings of the union people, the representatives and the union people, was Mr. Clairmont's action in permitting Mr. Barkett to say that in Mr. Clairmont's and Mr. Heinrich's presence, with the knowledge that they could have said, "Hey, fellows, here is the order for the new twin tread tuber, you don't have to worry about it, we are going to be in good shape," was that action, the action by Mr. Clairmont and Mr. Heinrich, likely to have an exacerbating effect upon the people or an ameliorating effect upon the people?

MR. MOSS: I object to that question, your Honor.

THE COURT: Sustained. You can argue that. In the first place, the question is so complicated, I would not understand what his answer was.

I thought you were starting it off with whether he could justify Mr. Clairmont's action, and that is for me to say. The rest, I don't understand the question.

MR. AUERBACH: May I explain?

THE COURT: Start with a question I can understand. Don't try to explain that one.

Q Was this statement by Mr. Barkett in Mr. Clairmont's presence, or did this statement, in your opinion, have an ameliorating or exacerbating effect on the feelings of the people there?

MR. MOSS: I object to that question, too. He doesn't have any idea whether it did or did not.

THE COURT: Maybe he heard something.

MR. MOSS: Heard something when?

THE COURT: He was there. He may have an idea.

Do you have any views as to what effect this statement had?

THE WITNESS: I don't believe it had much of an effect because they knew that part of the tread tuber was already in but it seems to me that what they would have liked to have known would have been, when is that installation going to be made and what can we expect from it so that we won't have to receive this allowance for short treads.

In other words, the negotiating committee, I'm sure, knew that this thing was lying idle there.

THE COURT: The union knew it?

THE WITNESS: The union knew it was there. They

saw it there in the warehouse. But they didn't know when it was going to be installed or if it was going to be installed.

THE COURT: If they thought that was important, they could have asked?

THE WITNESS: They could have asked.

THE COURT: Then somebody who had seen a copy of that letter you were looking at this morning could have stated, "We are just waiting for the other equipment to come in. It is supposed to be ready for production in July, therefore, we should not have this problem any more after the installation."

BY MR. AUERBACH:

Q Mr. Conway, I wonder if you could tell us in a unilateral job evaluation program, unilateral on the company's part, could there have been a substantial wage reduction on job evaluation alone?

A On a unilateral?

Q Yes.

A I don't believe the union would have accepted it.

Q Suppose the union did?

THE COURT: The answer to that question is obviously yes. You don't need a witness for that.

MR. AUERBACH: Since your Honor has indicated your prospective ruling --

THE COURT: I'm not quarreling with you.

MR. AUERBACH: If you so find, that is all I want.

Would your Honor also find that that wage reduction on a unilateral plan or possible substantial unilateral plan would be ~~inadequate~~ in addition to the 20, 25 percent the company was proposing?

THE COURT: I can't assume that.

If the union gave both a unilateral 25 percent plus the unilateral, then, of course, that is obvious. I don't need a finding for that. That is reading the contract.

BY MR. AUERBACH:

Q While you were there, did the company ever offer to take just one of the two, the 20 percent or the 25 percent, or the job evaluation, unilateral job evaluation?

A You said did the company ever offer to take --

Q Did the company ever change its offer to the union and say, "If you give us our kind of job evaluation, we will forget about the 20 percent or the 25 percent wage cut"?

Or did they ever say, "If you take the 20 or 25 percent, we will forget about the job evaluation"?

A I don't believe so. We went over that a little while ago. They offered that 20 percent in trade for the

change in the key jobs and that other item. I forget what it was.

THE COURT: The answer is in the minutes.

MR. AUERBACH: Your Honor seemed to indicate that possibly the company was willing to trade --

THE COURT: There is no question that the contract you described had the effect you described.

MR. MOSS: I would like to take exception to that. I do not go along with any suggestion that a job evaluation would result in a wage reduction.

THE COURT: It would result in less money.

MR. MOSS: Lower rates. We would have to get more production to make the same money. That is what would develop.

THE COURT: This is not a question of expert witness. It is a question of reading a contract. You can argue that.

MR. AUERBACH: I'm satisfied. My only point is --

THE COURT: Mr. Moss may have stated it more accurately. That is not a question of my finding. It is a question of what the contract reads. The Court of Appeals is much more capable of understanding that than I am.

MR. AUERBACH: I have not given up.

THE COURT: How much time do you need? I have a

criminal case coming on.

MR. AUERBACH: I need more than five minutes. About a half-hour, your Honor.

THE COURT: We won't be able to finish. Perhaps we can adjourn to four o'clock tomorrow.

MR. AUERBACH: The only problem -- it is okay so far as I'm concerned, but Mr. Conway is here from New Jersey. He has his wife deposited with another relative in New Jersey.

THE COURT: You can go home.

MR. AUERBACH: It is not close New Jersey. It is South Jersey.

THE COURT: There is no ~~way~~ place you can't get to within a reasonable time. It is apparent we won't finish tonight.

MR. AUERBACH: Could we resume tomorrow morning?

THE COURT: We will have it tomorrow morning at ten o'clock. You will be about a half-hour?

MR. AUERBACH: I imagine. Do you want me to continue?

THE COURT: We might as well break now, unless you have a question you want to ask you are afraid the moment will pass and you will never capture it again.

MR. AUERBACH: No, your Honor, I'm not afraid

of that.

THE COURT: Off the record.

(Discussion off the record.)

(Adjourned at 3:45 p.m.)

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UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA et al.,

Plaintiffs,

vs. 66 Civil 1154

LEE NATIONAL CORPORATION,

Defendant

New York, N. Y.

September 21, 1973 - 10:00 a.m.

(Trial continued.)

J O S E P H J. C O N W A Y, resumed:

REDIRECT EXAMINATION (Continued)

BY MR. AUERBACH:

Q I believe you testified that some time well before the negotiation started, a space had been cleared out for the tread tuber, but new tread tuber. Would you give us roughly an estimate as to how much space was cleared out and unused in the plant?

A I would say possibly one hundred feet. I'm not sure. It was to accommodate a long conveyor line, where you were to cool the treads in water. I would say maybe one hundred, 150 feet.

Q And how long?

A That's what I mean.

THE COURT: One hundred feet long?

PGP 2-237 Conway - redirect

THE WITNESS: Yes.

THE COURT: How wide?

THE WITNESS: Not very wide.

THE COURT: The appropriate space for such a machine?

THE WITNESS: Yes.

Q Was it a space that would be noticeable?

A It would be noticeable. It was clear. Everything was cleared out of there. Everybody knew pretty much what the idea of the clearing was.

Q Somebody coming in to look at the plant for the first time or walking through the plant for the first time would see an unusual amount of space?

A Yes.

Q I am going to read Mr. Hess' testimony, Mr. Conway, at an earlier stage in the trial, when he was asked what the jobs would be on the new tread tuber.

MR. MOSS: Your Honor, I object tothat until Mr. Conway has himself testified as to what his recollection is with respect to the tuber. He has not given any testimony about that so far as to what his job was with respect to that.

Q (Continuing) Page 1643, top of the page:

"A You have a mill man's job, and then you have an

operator and an assistant operator. You have a guy that weighs the treads, balances and weighs, and you have a guy that cements the ends of the tread; then you have your slitter, and then you have your bookers, the guys that pick the trays off the conveyors and put it in the books. You have a production service man, who takes the treads away and delivers them to the storage area, and this is about it that I can recall. There may be a few others."

How does that fit in with your knowledge or recollection of what the new twin tread tuber would be?

A I would say that I agree substantially with Mr. Hess' statement there, but I believe he was describing the operation the way it had been in effect with a single tread tuber, and I have never seen a dual tread tuber operate. I would hope that you might be able to eliminate ~~him~~ some with a new set-up, but I would not know, because I've never seen one operate. But I would say the jobs that were described there are substantially correct.

Q Except you are talking about the old tread tuber?

A Yes.

Q What you would expect would be the possibility of elimination of some jobs?

A Possibly.

Q In your opinion, if and when the new tread tuber was

put in, would the company have an automatic right to start the re-evaluation process on all the jobs on the new twin tread tuber?

A Yes, sir; I would say so.

Q Did the union ever indicate any objection to the elimination of jobs by modernization of equipment like this?

A Not that I can recall.

Q When you testified yesterday, you stated in answer to one of Mr. Moss' questions that you had had lay-offs over the years. Were they as big as the lay-offs in the Clairmont period?

A Oh, no. No; they were not.

Q Could you give us some estimate of how big the lay-offs were and for how long?

THE COURT: I imagine in the early thirties they were rather substantial.

MR. AUERBACH: I meant after the union came.

A It's a rather difficult question to answer. I would say we possibly laid off ten or twenty people throughout the plant. The duration was -- depending on how business was, you might recall them in three or four months; you might recall them in ten or eleven or twelve months. It all depended on your production needs.

Q You said the number of people was --

PGP 5-240 Conway - redirect

A I remember we had one lay-off where I would say we laid off possibly eight or ten people out of the mill room alone.

THE COURT: If any of those people had been senior to the tire builders, they would have to take the job even though they didn't know the first thing about building a tire?

THE WITNESS: They had the privilege of taking it.

THE COURT: I guess a man would exercise the privilege.

THE WITNESS: Yes; he would. He would exercise his rights to bump all the time rather than be laid off.

THE COURT: Rather than not have the money to feed his family.

THE WITNESS: That's right.

Q You said the lay-offs would be what? Ten to twenty people?

A I would say about that.

Q Was this when they had eleven hundred people working there?

A Eleven hundred or less. A thousand, possibly, nine hundred. The more employees you had the more susceptible the youngest ones were to being laid off, depending upon any fluctuation in your production requirements.

Q In point of fact, were there many tire builders bumped in any one of these periods?

A During those periods, there were not so many because you were laying off from the bottom of the list and a lot of the people that were being laid off didn't have enough seniority to permit them to bump into the tire building, but later on when you started to have some more substantial layoffs, then you had a lot of movement throughout the plant because you were laying off people with considerable more seniority and they did have to bump tire builders.

THE COURT: When you say "later on," what do you mean?

THE WITNESS: During the last year of operation.

THE COURT: Was this after Clairmont or before Clairmont came?

THE WITNESS: I think we had some before Mr. Clairmont came, but I don't remember when that movement started. I believe we had some layoffs. We had some bumping through the tire building classification.

MR. AUERBACH: If I might comment or note to your Honor, there might be some obscurity, at least in the witness' mind, as to when Clairmont came.

THE COURT: You can clear it up.

BY MR. AUERBACH:

Q I would like to get back, if I may, Mr. Conway, to the working agreement, Exhibit 35, and particularly 807.

Mr. Moss was asking you yesterday under Contract 807, if you could not do any re-arranging, you didn't have a contractual right to re-evaluate a piecework job, how did it work out in practice?

A If we had a rate that we considered was too loose, we would call the union in and go over the matter with them and show them the figures and tell them we thought we were going to have to make a revision in that particular rate, and sometimes they would go along with us and other times they would not agree with us, and sometimes we would go through and do it anyhow and the union would file a grievance.

In other cases -- you said suppose you could not substantially re-arrange? I consider that my answer.

Q As a point of actual practice, forgetting what the words of the agreement say, were you usually able, in one way or another, whether it was by re-arrangement or by grievance or by arbitration, whenever you or the company felt that a rate was well out of line, were you normally able to work out relief for the company?

A Yes, sir.

Q Mr. Moss was asking you yesterday whether you had gotten any concessions from the union.

I would like you to turn to page 63.

THE COURT: Give me the section.

Q To Section 17.19, and particularly to the second paragraph of that section:

"The company may discontinue any operation at the Conshohocken plant or of any work done outside the Conshohocken plant."

I take it that the matter in bolder or darker print, Mr. Conway, it's been testified, was the change in the current agreement?

A Yes, sir.

Q This is the last agreement that you worked out before Clairmont came. Did you consider that a major concession by the union?

A Yes, we did.

Q Would you please tell the Court why?

A Because we had considerable trouble being able to send work out to be performed. This is maintenance work that -- it is not only maintenance work but production work, too.

This work was to be performed on the outside

before we were able to negotiate this contract, and after we were able to get this, then we could have it performed outside.

Q From your knowledge of labor relations and union contracts as they existed at that time, was that found in a lot of union contracts?

A I don't believe so. As a rule, the companies were restricted pretty closely as to what they could do outside the plant or what they could do with so-called outside contractors, either inside or outside.

This other clause, No. 17.18, was a better clause than a lot of them had, in that we could bring mechanical people into the plant to have work done also.

We had worked this out prior to this contract in that we would give notice to the union what we were going to do and what outside contractor was going to be brought into the plant.

That is not found in many agreements either.

Q You have testified that you had started an extensive job evaluation or re-evaluation program sometime before Clairmont came into the picture. You were working on it.

Did the union know that you were doing this?

A Yes.

Q You didn't make a secret about it?

A No.

Q Did the union ever tell you to stop?

A Not that I know of. Sometime some of the individual members didn't like the idea of being time studied, but I don't recall that they ever tried to stop us from doing it, because I think they realized that it was our right to do it.

Q Did you know whether the union knew that this was quite extensive on your part?

THE COURT: Extensive?

MR. AUERBACH: Yes.

A I should think they would have because they knew how many industrial engineers we had in that department as compared to the fact that we had, actually, no industrial engineering department prior to the beginning of this activity. We had, I believe, five or six.

Q Had you discussed what you were doing with the union?

A Well, they knew what we were doing because the fellows were out in the plant taking time studies and writing up these standard operating procedures. So far as I know, there were no grievances or anything in connection with what we were doing.

Q You testified yesterday in answer to a question by Mr. Moss in regard to your testimony in the Unemployment Compensation Commission of Pennsylvania, with regard to some hope of averting a strike between the 16th and the morning of the 18th.

On the 16th, after you had given the work rules to the union, was there a time when you made an effort or an inquiry from the powers that be as to whether any change could be gotten in the work rules or any hold-off made?

MR. MOSS: Your Honor, could we break that question up, please?

I would like to know, first, whether there was any inquiry and then whether he made an effort. The two things are different.

MR. AUERBACH: I'll change the question.

Q Was any inquiry made --

THE COURT: By whom?

Q -- by you to either Mr. Heinrich, Mr. Clairmont, or anybody else, as to whether the company would remain adamant or mighthold off on the work rules?

A On the 16th, after the union notified us that they were not accepting the rules -- I'm repeating what has been already testified to -- the union offered to continue working on the basis of the old agreement.

I'm sure Mr. Heinrich had notified Mr. Clairmont that they had gone out on strike and I was told that by Mr. Heinrich that Mr. Clairmont said that we were going to operate on the basis of these new rules and that was it.

The door was closed pretty well, but I was still hoping, as I testified in the Unemployment Compensation hearing, that over that weekend, Mr. Clairmont might have a change of heart and decide possibly to break down on some of those new work rules to the point that might interest the union into coming back in and trying to negotiate something.

THE COURT: The question was, did you ask anybody to change their view? Either Mr. Heinrich or Mr. Clairmont.

THE WITNESS: I didn't ask anybody to change their views because I was told that there was no chance of doing that.

Q Do I understand you testified that you brought Mr. Hess information or counteroffer that the union would work on the old contract back to Mr. Heinrich for transmittal to Mr. Clairmont?

A Yes, sir.

Q In your experience, is an offer by a union, particularly at a time when that industry has already gotten an across-the-board raise, to forego that raise and continue and extend the old contract a major concession?

A To forego the raise?

Q Yes.

A Sure.

Q Did it happen very often?

A No. I would not -- it didn't happen very often.

Q I asked you yesterday in regard to the work rules, the unilateral job evaluation program that was contained therein, was there, in your opinion, any minimum or stop clause or stop area to how far down the company could lower the job rates?

A You mean in the work rules?

THE COURT: You are asking for his opinion? I'll let you ask him this question:

How he thinks the union would interpret that as a bargaining thrust.

THE WITNESS: I think I see what you are both driving at.

THE COURT: You are way ahead of me.

THE WITNESS: I would say that the union's interpretation, I would expect, would be that if it is not a completely bilateral type of clause, it would not be satisfactory because they would feel that they are giving up a large factor in that it would -- of course, you know most unions are usually suspicious of management anyhow, and they would probably interpret that clause to mean that the

company could go as low as they wanted to in revising rates in connection with any proposed job evaluation program.

Q In your negotiations with the union in the discussions of a job evaluation program, I would like to show you the Cooper Tire and Rubber Company agreement.

MR. AUERBACH: I was under the impression this was in evidence but there is reference to it. I think I can --

THE COURT: You can show that to him. Show it to Mr. Moss.

MR. AUERBACH: There has been reference to it in previous testimony.

THE COURT: I've seen it.

MR. AUERBACH: Cooper contract, October 31, 1961.

Q One part reads, Article 5-B:

"Classification of new jobs ~~or~~ and existing classifications of jobs shall be established in accordance with levels established through job evaluation by a joint committee consisting of two members appointed by the company and two members appointed by the union.

"In the event the job evaluation committee described in the formal company-union agreement is unable to agree upon the evaluation of the job, the union and the company will mutually select a practicing industrial

engineer, skilled and experienced in job evaluation, who is a regular member of the staff of a professional industrial engineering firm, who shall establish the evaluation of the job in question.

"This same industrial engineer shall be employed to establish all such disputed jobs during the term of the then current company-union agreement. The decision of this industrial engineer shall be final. The cost of employing this engineer shall be borne equally by both company and union.

"In the absence of any other agreement, the industrial engineer mentioned above will be selected by asking the American Arbitration Association to submit the names of five men answering the above description. Union and company will alternately strike out names until only one remains."

There is more on that but let me ask you this:

Do you recall that Cooper agreement?

A Yes.

Q In your opinion, based on your experience negotiating with the union and the facts as you knew them then, did you feel that you could get the union to go along on that clause or that type of arrangement or one substantially like that?

THE COURT: You are asking of his then "feel"?

MR. AUERBACH: Yes.

THE COURT: What was it?

THE WITNESS: I would expect that the union would go along because the way that all boils down is to the fact that if there were any differences between the company and the union, they would be settled by the impartial arbitrator, so I would expect that the union would have accepted a clause of that type.

Q Even though he was not called an arbitrator, he was called an industrial engineer, would that still be your answer?

A Yes. Whoever the party would be that would be selected between the company and the union. In fact, that is quite common throughout the entire tire industry for that. The big fellows have an impartial arbitrator all the time.

MR. AUERBACH: This is an impartial engineer.

Q I would like you -- getting back to the work rules, Exhibit 44 -- to read it and then I'll ask you a question. This was paragraph 9 and was the last paragraph. It is headed, "Other Terms and Conditions of Employment."

"All other terms and conditions of employment previously in use shall continue in effect until further

notice insofar as they are applicable in the absence of a working agreement and a supplemental unemployment benefits agreement and provided they are not inconsistent with the new terms of employment designated above. Should the company from time to time find it necessary or desirable to make any other changes, it shall so advise the union and discuss such changes with the union."

I will give this to the witness.

Q In your opinion, how was that likely to be interpreted by the members of the union?

A Well, my feeling at the time that I saw this clause was that the union would feel that the company was asking for a blank check because that last sentence would permit the company to make any changes that it desired.

All they had to do was discuss them with the union but regardless of how the discussion would come out, they could still go ahead and make any changes that they wanted to without any union consent or agreement at all.

THE COURT: For your guidance, Mr. Auerbach, I think I observed at the previous hearing, it is my impression, that at the time these rules were issued, it was Mr. Clairmont's purpore to precipitate a strike. Mr. Moss probably would not agree with that.

You don't need to ~~collaborate~~ elaborate that any further.

I think he so said that but I'm not sure of that.

MR. MOSS: Furthermore, I believe you ruled that it was perfectly within the company's right once there was no working ruling to post any working conditions they wanted to.

THE COURT: What Mr. Auerbach is establishing by these questions is that this working agreement posting was likely to precipitate a strike, and as far as I am concerned, that is already established.

MR. AUERBACH: I don't disagree with Mr. Moss' statement that the company could legally do it.

I would only like in this regard -- I don't want to sum up now or anything -- to remind your Honor that Mr. Clairmont did not -- he was still hoping, he claimed, to get them back.

THE COURT: Ultimately, yes. My recollection of what he said was, at this time, that the only way to get them to do something was to get them out on the picket line and let them suffer a little while, which is a perfectly legitimate act.

MR. AUERBACH: It is perfectly legitimate for him to close the plant.

BY MR. AUERBACH:

Q I would like to ask this:

Do you think there is any union in the United States that might have accepted those work rules?

A No, I don't.

THE COURT: I don't think his competence is enough to cover the whole United States. There must be some union which is docile enough.

Q I think I already asked you this but I would like to ask you again --

MR. MOSS: I object to that also unless he's trying to get him to change his answer.

THE COURT: No, no. Overruled.

Q Did Mr. Clairmont ever ask you after the strike started for your ideas on how to end the strike?

A How to end the strike?

THE COURT: You did ask him that and he did answer it, and he said no.

Q To your knowledge, did Mr. Clairmont or Mr. Heinrich take any steps to end the strike after July 16th?

THE COURT: That is excluded. I was told in detail what happened.

MR. AUERBACH: I have no further questions, your Honor.

THE COURT: Mr. Moss, for your guidance, do what you think is necessary to protect your record. For your

guidance, I have not been persuaded by anything on redirect. Don't just use it, to save yourself time in writing a brief, to collect everything in one place.

MR. MOSS: I have only two things I would like to question him about.

One is to ask a question of Mr. Conway that I neglected to ask yesterday, and the other is to ask you to receive certain documents in evidence. That's all I would like to do.

BY MR. MOSS:

Q Mr. Conway, do you recall during the course of the negotiations, a negotiating session at which Mr. Clairmont offered to take the union representatives to one of the nearby plants, I believe in Pottstown, for the purpose of showing them what was being accomplished in that plant?

A Yes. I recall that.

MR. MOSS: Secondly, your Honor, may I please --

THE WITNESS: Could I elucidate a little on that, your Honor?

THE COURT: You may.

THE WITNESS: Mr. Clairmont did offer to take some of the negotiating committee people to see operations in another plant, which I think was Firestone in Pottstown, and I think the result of that offer, from what I recall,

was that he was not able to get permission from Firestone to bring these fellows into the plant. I don't believe they ever got to the plant.

MR. MOSS: Your Honor, for the purposes of having the record complete, I would like to offer in evidence or have your Honor take judicial notice and allow reference in the briefs to the material contained in Moody's Industrial Manual for the years 1960 through 1964, with respect to Lee, Cooper, Mohawk and Mansfield, referring to their respective sales, profits, and other figures generally reported in there with respect to those companies.

THE COURT: I assume you agree he is entitled to ask me to take judicial notice of Moody's Manual?

MR. AUERBACH: I have no objection, your Honor.

THE COURT: Why don't you offer it in evidence?

MR. MOSS: I will furnish Mr. Auerbach with a copy. I happen to have only one copy of each set. If Mr. Auerbach is agreeable, I will have them Xeroxed and delivered to him and then to you.

MR. AUERBACH: Does it cover the entire industry?

MR. MOSS: Lee, Cooper, Mansfield and Mohawk. If you have any desire to refer to similar material in similar years for other companies, that is satisfactory to me.

We leave it that we may refer to them?

THE COURT: You may refer to them and furnish each other with copies.

MR. AUERBACH: Could we put a number on that?

MR. MOSS: If we can put a number on this, I will submit these to your Honor so you won't have to go lugging Moody's around and I'll give copies to Mr. Auerbach.

THE COURT: Fine.

MR. MOSS: The next number is 139-A.

THE COURT: 139-A will be received.

(Exhibit 139-A received in evidence.)

REDIRECT EXAMINATION (Continued)

BY MR. AUERBACH:

Q Mr. Conway, where was Cooper?

A In Findlay, Ohio.

Q Do you know where Mansfield was?

A In Mansfield, Ohio, and they also had a newer plant out on the West Coast. I think it was in Los Angeles.

Q How about Mohawk?

A Mohawk -- they had their oldest plant, I guess it was, in Akron and they had a newer plant somewhere around Little Rock, Arkansas. It is in that area of the Midwest.

Q In your work and in your experience, are there

differences in labor rates from Littlerock to Findlay, Ohio, to Conshohocken?

A Sure.

Q In terms of rates in various union contracts, were there any differences depending upon the labor areas?

A Yes, there were.

MR. AUERBACH: I have no further questions.

THE COURT: Do you rest?

MR. AUERBACH: Yes.

THE COURT: You can stay here and listen to lawyers' talk, or you can go home.

THE WITNESS: I would like to stay here and listen.

(Witness excused.)

THE COURT: Mr. Auerbach, I have just indicated my general views. How would you like to proceed? As I indicated, this morning at some point I am going to put my views on the record for educational purposes, not for making a finding. Do you want me to do that? Would you like to argue first, or would you like to reserve argument to your brief?

MR. AUERBACH: What I would think would be most helpful, your Honor, is that without waiving my right to a brief and argument, I think there might be some value in an interchange at this point, since your Honor said that disposition is still tentative. It may be of value if you tell us what you have on your mind, what is troubling you from our point of view. At least we may or may not be able to bring up some points that would clarify that.

MR. MOSS: Your Honor, if I may, with all due respect to everybody, I think this method of procedure is prejudicial to everybody. I think that Mr. Auerbach has presnted his case now three times. You have expressed various

views about it. He ought to produce his arguments, and we ought to produce our arguments, and we ought to get the matter on a more formal basis than it has been in the past.

He knows what his case is. He should know what his burden of proof is. The evidence is in now, and it seems to me it is up to them to convince you without having sort of informal discussion about the areas --

THE COURT: I see your point, but having indicated the probability of ruling against Mr. Auerbach, I think I will let him have the satisfaction of doing it the way he wants to.

One thing I want to make perfectly clear: You have rested. As far as I am concerned, you have rested. If new ideas occur to you as a result of this interchange, there will be no reopening. As I have indicated, you have rested, and that is the end of it. If new ideas occur to you as a result of this colloquy, that's too bad.

MR. AUERBACH: I am only looking for new ideas to convince you not to --

THE COURT: As I indicated in my last opinion, I think I have discretion to reopen the case in the interest of getting the ~~facts~~ facts, despite dereliction of counsel, but there are limits to how far that discretion can be exercised, and I have gone as far as I can.

PGP 261

By way of background as to why I did reopen the case, as I indicated the last time, I am satisfied that you have not made out a case. In thinking over your arguments later, it occurred to me that there was a possibility on this tread tuber proposition -- it is quite apparent that I am the only one that thought of saying so --

MR. MOSS: If I thought of saying that, I certainly would have.

THE COURT: In any event, quite frankly, my fear was that there was a case here that counsel had not developed. I hate to say this, but this is the most badly prepared case for the plaintiff in any important case I have ever had any contact with in my years at the bar and my few months on the bench. There is no excuse for it.

My first contact with this case was in a conference in which Mr. ~~Auerbach~~ Moss was pleading for time. If you were not prepared, all you had to do was take time.

This witness who was on today is the first witness who gave any indication of your ever having talked to him before you put him on the stand.

Be that as it may, I want to preface what I want to say about Mr. Clairmont by saying unequivocally that I found him to be a truthful witness. Frankly, I was uneasy in relying on his testimony, for the simple reason that

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he had such a powerful personality. I was unsure of my ability to see through it if he was not being truthful.

Quite the contrary with Mr. Heinrich. I had no question in my mind at all (a) that I was able to appraise him and he was being truthful. He would not, and Mr. Conway would not testify to something they did not think was true at the time. He would not and Mr. Conway would not. I was uneasy as to him simply because the proper questions had not been asked of him to develop phases of his story which might be helpful.

In going over the minutes of the union meetings, finally presented to us the last day of the hearings -- and I finally got them all -- it was perfectly apparent that Mr. Conway was a witness who would be favorable to the plaintiff. His whole attitude was apparent. In sizing up the situation, it is apparent that he had to be. He reminds me, in appraising his attitude towards this case, of my first important appeal, when I took over as head of Mr. Hogan's appeals bureau. It involved a case which happened to be tried by Judge Gurfein, who was assistant District Attorney. Judge Gurfein obtained a conviction before Judge Sherman, and I obtained a reversal before the Court of Appeals.

Now, if Judge Gurfein and I were called as experts as to whose fault that had been, you could have predictably

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come up with different views. It was quite apparent I would not think it was my fault, and Judge Gurfein would not think it was his fault.

Happily, that was the beginning of my career and not the end of it, so I have not thought about it much since.

The position Mr. Conway was in, at the end of a successful career to him, he was all of a sudden faced with a disaster which he was responsible for. He must have thought about it since. It is perfectly obvious by this time he is convinced that the fault was Mr. Clairmont's.

Interesting enough, Mr. Conway thought, as he testified, that the Barbu report had been Mr. Clairmont's idea, unilateral idea, to put one over on the union. I have no question that as he sat there on the witness stand, that is what he thought. He was present when the union suggested that.

Similar things could be developed, in my thinking, if I had been worrying about that case I lost for Judge Gurfein twenty years ago. So his opinion doesn't seem to me to be particularly persuasive, because it is predictable and almost inevitable.

Incidentally, I told Mr. Moss that I would strike his opinion evidence, and I hereby do strike all testimony of Mr. Conway as to his opinion of anyone else's motive, except

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insofar as that opinion is based on statements made by the person whose motive is under consideration.

I deliberately let Mr. Conway testify freely as to his opinion, because, believing him to be a truthful witness, I thought it would be beneficial to let him talk in his own style, and the facts would be developed. I am very glad that he was called, because the facts developed by Mr. Conway support the view that I came to at the conclusion of the plaintiff's case, and therefore I need not concern myself with what other witnesses, who obviously would be friendly to the plaintiff, if the facts were as he contended, had been called.

Who is the plant manager? Heinrich?

MR. AUERBACH: Barkett.

THE COURT: It is obviously Mr. Barkett, if the facts were as the plaintiff contends, who would be a witness for the plaintiff, because it was the plaintiff's theory he was defrauded in leaving a good job in Firestone, I believe it was, and coming on this wild goose chase.

You start off thenwith the high impossibility of the plaintiff's theory -- I think it is your theory -- that Chirnat bought ~~he was brought~~ in knowing he had to close this plant, if I recollect your argument. There must be easier ways of making money. That's all I can say.

As to this tread tuber, Mr. Conway's testimony on

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redirect made it perfectly apparent that everybody in the plant knew the place had been cleared for the tread tuber, and had it been that important, it is inconceivable that no one would have asked about it.

Mr. Conway says he didn't know the tread tuber had been ordered. Again, without in any way doubting the truthfulness of his testimony as he is sitting here, that is what he now thinks. It seems to be highly unlikely that that could be so. His description of the way they operated at the plant, the way they talked to each other, talked to each other at lunch about plant matters, the fact that this memorandum was certainly not a secret memorandum among several people it seems to me highly unlikely Mr. Conway didn't hear about it.

I think the reason he doesn't remember hearing about it was that he didn't think it was of any importance and must have forgotten. What he told me in answer to my questions made it perfectly clear he still doesn't ~~know~~ think that the existence of the tread tuber was of any great importance. He does think in retrospect that the investment Mr. Clairmont had ordered and committed to that tread tuber could have been used to assuage union fears as to Mr. Clairmont's integrity and intentions -- 20/20 hindsight that may or may not be correct. It's like you have the ball on the twenty-yard line, with one yard to go, on third down, and should you pass or

run? If you pass and the end drops the ball in the end zone, it is apparent you should have run.

Three possibilities occur to me, thinking at that time they might have thought, as Mr. Conway now thinks:

It would have been helpful to assuage the fears of the union.

They might have thought it would be a mistake to let the union know they were spending this money.

They may have been trying to convince the union they were going to shut up this plant if the union didn't come to terms.

It seems to me most likely they didn't think anything about it at all. It didn't have any bearing on negotiations until Mr. Conway thought so, when the difficulty was presented to him by Mr. Auerback indirectly.

So I find that the plaintiffs have not persuaded me that it is more likely that Mr. Clairmont precipitated this strike for the purpose of it going for the year and a half to terminate thecontract and carry out the plot that plaintiff lays at his door. On the contrary, the evidence that has been presented to me has left me firmly convinced that it is highly unlikely such should have happened, and I therefore intend, unless my view is changed by arguments presented to dismiss the case -- if I do change my views on

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arguments presented, it is understood that Mr. Moss can continue with Mr. Conway's cross-examination as though he was still cross-examining an opposition witness.

MR. AUERBACH: First, I would like, for the protection of the record, to say that I assume that Mr. Moss is not asking for argument now. Should your Honor change his mind, I would not want any claim that he didn't have the opportunity to argue --

THE COURT: I assume that is correct. You don't want to change my mind at this point?

MR. MOSS: No, sir.

MR. AUERBACH: I don't mean that. I mean, to reinforce the thought that he was not afforded an opportunity to argue.

THE COURT: Off the record --

(Discussion off the record.)

THE COURT: Do you want to argue now?

MR. AUERBACH: Yes.

THE COURT: I will put that business on the record afterwards, but you may proceed.

MR. AUERBACH: Your Honor, first I want to state that regardless of how it may have appeared, that the witnesses were not examined by us before we got to court, I will tell you positively and categorically, as a statement of fact

and as a representation that with the exception, of course, of Mr. Clairmont and Mr. Heinrich, who were not really our witnesses --

THE COURT: Nothing stopped you from examining them.

MR. AUERBACH: Yes. We told you this case was put --

THE COURT: You are going to tell me there was no pre-trial?

MR. AUERBACH: That is correct.

THE COURT: When was the Federal Court established? I ought to know this.

MR. AUERBACH: When it was established?

MR. MOSS: About 1789.

THE COURT: 1789 it was established. Pre-trial examination started about ~~two years later~~ twenty years ago? How do you think cases were prepared in the meantime? You don't need pre-trial to examine the witness. You write Mr. Moss a letter saying, "Dear Mr. Moss: In order to save the Court's time, I would like to interview Mr. Heinrich. Please arrange it and tell him I am coming."

Mr. Moss can do one of two things. He can write you back and say, "No, I am not interested in saving the Court's time; I am not interested in getting out the facts, and Judge Knapp can make whatever he wants of my views!" or

he can arrange it.

All you had to do was see Mr. Heinrich, and you could have seen him -- exactly as you saw Mr. Conway.

And, furthermore, your other witnesses kept on coming in, surprising you with documents that they just found in their cellar the day before. What kind of examination and preparation is that?

MR. AUERBACH: All I want to say was that we had those witnesses in our office.

THE COURT: Then you didn't ask them any questions that were relevant.

MR. AUERBACH: We had them in. We had Mr. Vasko and Mr. Hess and Mr. Fisher. We had them in our office. We had them in several times. We went over and spent days going over --

THE COURT: I don't know what you did, but time after time the answer would come out, and the two of you would confer, and you didn't know what to do about it.

MR. AUERBACH: The fact is that we did interview them.

THE COURT: You didn't ask them where their records were.

MR. AUERBACH: We did have them in, time after time, and did interview them.

Getting to the argument;

First, as to our theory, I don't know that we say that Mr. Clairmont made up his mind before he bought into the ~~case~~ company. We say he made up his mind to close the plant well before the negotiations started.

THE COURT: At what point did he make up his mind?

MR. AUERBACH: It is our theory he made up his mind that he was going to try what he tried in the fall to get them to make all kinds of agreements which would give him escape clauses. If he got it one way, fine; if he didn't, didn't get it another way, then the strike would be the hard way. But his mind -- This was the procedure that he had adopted.

THE COURT: Why do you think on that theory he worked with Mr. Van Anda and Mr. Heinrich in formulating these things and on the record told the union their request to have Mr. Clairmont, the chairman, come to the meeting ~~was~~ was ridiculous? What was his purpose in doing that? Auerbach Let me get to my thought of charade from the beginning. There is no question, the union has never made a claim that Mr. Clairmont didn't have a legal right to close the plant. No question about that.

No question, either, that it was a good business decision. Certainly, we don't quarrel with it. We don't say,

your Honor, that there is anything nefarious in making a decision to close down under the circumstances.

THE COURT: But you certainly would say it was nefarious to conduct a strike on that basis.

MR. AUERBACH: I would say that this whole thing was a ploy.

You said -- and this I would like to dig into, your Honor -- if he made up his mind to do this, this was a hard way to make this kind of money, and you also said at the time of the argument at the end, the last day of the previous hearing, you might go to that trouble to make two million dollars or to save two million dollars, but you can't see Clairmont doing it, and I say, most respectfully, your Honor, I think that is error, that I think to say that a man like Clairmont wouldn't go to that trouble to save two million dollars, really -- this is a hard-working man. I think --

THE COURT: You don't mean legal error?

MR. AUERBACH: That's right, that Mr. -- We never said he was not brilliant or hard working. Mr. Clairmont would do a lot more -- it was within the law; he didn't do anything criminal -- to save two million dollars.

We start off with the premise that if he announced on June 30th or May 15th or April, "We are going to close down the plant. We are going to sell the operation," or

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whatever it is, they would be liable for the two million dollars. He had another motivation for this charade. He was looking to sell the plant.

Obviously, your Honor. He felt that business was bad and wanted to sell. He has a name; he had some value to the public. I don't know whether you remember it, but as a youngster I remember seeing ads in the magazines: Lee of Conshohocken.

THE COURT: I take that as a ~~fait accompli~~ compliment

MR. AUERBACH: In point of fact, he did sell. It's called Lee right today ~~on~~ of Conshohocken. It is still the name Lee.

Well, obviously he had a different type of charade to keep the operation going or keep the name going, not the operation: the name, so he could contract it out or try to sell it to Goodyear, as he ultimately did, or somebody else. It would always be easier to try to sell it with it fully equipped, with the fully equipped plant and with the name. That was why he contracted out, why he would contract out to keep the name alive and to keep what customers he had. Customers are always worth something. There is a saleability in that.

So it paid him to go through that charade.

What did he do? He came to a few meetings. We

are still talking about a couple of million dollars. Two million dollars in 1963 dollars and not 1973 dollars. They were worth more than they are today.

The question is here: was this a man sincerely trying to avoid a work stoppage? How truthful was this man in his testimony before your Honor?

I would like your Honor to reconsider finding him such a truthful man. One of the things your Honor asked me in the argument, the previous argument: you said, "Look: he went out and got Pep Boys," but, you know, to get a lot of customers. Mr. Conway has testified that they had Pep Boys, before Clairmont came into the picture.

THE COURT: I don't remember if he testified to that. He said he remembered Pep Boys. I don't remember that he gave a date for it. I certainly would not take Mr. Conway for his recollection as to the date when Pep Boys came when it is perfectly easy to establish it by record.

MR. AUERBACH: He didn't cite the record. He said it was there --

THE COURT: That was his impression. I would not take Mr. Conway -- Mr. Conway would think I was a fool if I took his impression as to a date or whether it was before or after something that happened ten years ago, when you have records which could show it one way or another without any

question at all.

MR. AUERBACH: As the record stands, I submit there is no evidence that Mr. Clairmont got Pep Boys.

THE COURT: There is his testimony.

MR. AUERBACH: I would like tp point out to your Honor that in the Strong-Narovec report, which covers the period, they took a six-month period and they said ending April 30, 1963.

THE COURT: If he didn't get Pep Boys, you could have disproved that by subpoenaing the contract.

Don't ask me to draw all kinds of deductions from the thing that he is lying. You could have proved that lie as simply as rolling off a log. All you had to do was: "I call upon Mr. Moss to produce the contract of Pep Boys." That is all you had to do to establish that that was a lie.

MR. AUERBACH: Let's take, if I may, your Honor, the tread tuber. Again we get to Mr. Clairmont's veracity. I originally asked Mr. Clairmont about the tread tuber because he had testified repeatedly that everybody who looked at the plant, that is, manufacturing and engineering experts, "Everybody told me that there was nothing to do in the plant." It was all perfect. It was all the fault of the union.

So I asked him about the tread tuber, and he said they were inefficient and were not working. The big harping

was on the efficiency.

Well, in point of fact, it was not so, as Mr. Heinrich conceded. There was a very important item of equipment that was not there, that was extremely inefficient, and he was not being truthful when he said everything was there and everything was efficient.

THE COURT: Are you suggesting that he was deliberately lying about that tread tuber?

MR. AUERBACH: I don't think --

THE COURT: One thing the man doesn't seem to me to have been was a fool, and if he was deliberately lying about that tread tuber when he knows that all you have to do is call on Mr. Moss to say, "Tell me about the tread tuber" -- He had forgotten about the tread tuber. That is what he said.

MR. AUERBACH: But then his statement that everything was in perfect order was not true. That is admittedly not true. He may not have remembered it back in 1973 when he was testifying, but he sure as shooting knew about it back in 1963.

THE COURT: I'm sure he did. He approved $200,000, or whatever it was.

MR. AUERBACH: Your Honor said at the time of the original argument that Judge Mansfield had had the knowledge

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about the authorization for $200,000 and some-odd for the tread tuber -- if Judge Mansfield had had the knowledge about the authorization for the tread tuber he would have granted ~~our~~ the motion for summary judgment. That proves that he intended to stay.

I submit, your Honor, that there is another reason. We know that he sold the plant. We know he was going to sell the plant.

THE COURT: That was the argument that persuaded me I had to hear more evidence.

MR. AUERBACH: I want to look at it not from the point of job evaluation. I want to get back to your simile. If I were going to sell my house, I would not go making repairs. That's your simile. I would like to put this proposition:

If you or I or anybody else was going to sell a house and it had a leak coming down in the living room or something missing --

THE COURT: As I say, I reconsidered that argument. That was the argument, that part of the argument, that led me to let you reopen the case.

MR. AUERBACH: Now I would like to follow that through.

THE COURT: I reconsidered my rejection of that as

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an absurdity and thought it was a possibility.

MR. AUERBACH: Now I would like, if we go on the assumption that Mr. Clairmont said the company has already spent the money, somebody is going to come around looking, because nobody is going to buy a plant without looking, and there is this great big piece of equipment sitting with dust, covered with dust, as Mr. Conway said, and something over here -- "We'll get our money back on that. Let's get the rest of the part and let's have it" --

THE COURT: I am telling you, I have accepted that as a point of argument.

MR. AUERBACH: If that is the reason why he did it, and following our charade and, to use your words, was he trying to exacerbate rather than ameliorate?

Let's take the situation when the business with the off treads came off, off standards came up, rather.

First you raised the question: Well, look: anybody could have asked Mr. Clairmont or Mr. Heinrich, "Are you doing anything about getting the new tread tuber?"

It's true they could have asked, but in the light of the way people felt, Mr. Conway has testified, as did Mr. Hess, that they had Mr. Clairmont pegged for a close-out.

THE COURT: Mr. Conway testified he was on very friendly terms with Mr. Heinrich. He didn't have to ask Mr.

Clairmont anything. I can agree with you asking Mr. Clairmont. You proceed cautiously.

MR. AUERBACH: My point is that there might be a diamond sitting here right somewhere in the jury box, that all of ~~this~~ us could pass by, and if we knew there was a diamond somewhere in this room that had been abandoned, we could legitimately pick it up.

You could always say, "My God. All you had to do was look."

THE COURT: A diamond would not have been half visible in the room, and someone asks, "Where is the other half?"

MR. AUERBACH: There has been a lot of testimony that they had Mr. Clairmont pegged. They were under the impression that he was there to close out the place. The head or the big part that was in there had been ordered during Mr. Garthwaite's administration. Whether it came in after Mr. Clairmont came in or not, it was obviously ordered before, in the pre-Clairmont period, and so it was sitting there after the space had been cleared, sat there for months, untouched, as testified by Mr. Conway. It was the situation where nobody asked. They just assumed that Mr. Clairmont was not going to do anything about it.

Therefore, I ask you, your Honor, to consider this

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picture.

Your Honor has stated you are not a labor expert, but obviously we have all talked to people who have had strike situations. We all know that any executive who has a ~~stroke~~ strike in the offing or where it is a possibility or where it is starting, even the most hardened business man says, "What can we do? How can we get them back? Should we try mediation? Should we offer arbitration? Do you think if we offered two per cent across the board we can do it?"

You try everything without giving away the shop. You ask for suggestions. You try everything.

Here is Mr. Clairmont and Mr. Heinrich sitting in the room when Mr. Barkett brings up this thing and says, "We know you got a problem with treads."

In effect, "We know it is not your fault, but we want you to take a cut. Shouldn't we get the off-standards?"

As your Honor recalls, you get off-standards. You go on off-standards, which means you get your average even though you are not producing, because the equipment is either down or malfunctioning or not getting materials.

If Mr. Heinrich and Mr. Clairmont, who were both sitting in the room -- obviously, while Mr. Clairmont may have forgotten --

THE COURT: He knew about it then.

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MR. AUERBACH: He knew about it then. Here is a fellow who is watching every penny and just authorized $210,000. He certainly is going to want to get his $210,000 worth. Wouldn't he have said, your Honor -- isn't it conceivable that he would not have said something about, "Look, fellows" --

Remember, Clairmont made all those speeches to the people, "I'm a decent fellow. Don't believe what you heard about me. I don't have strikes."

So he was there. He had made a talk at some of these meetings. He was not afraid to talk. He could have said, "Look, fellows: what are you talking, Barkett? What are you talking about off-standards? You know we have equipment. We will get it in July."

Maybe, as your Honor said, these things take longer than predicted, so what's the difference? If it was not in July right after the contract went into effect, it would be August, September. That would have been a perfect place. Mr. Clairmont is a brilliant man, your Honor.

THE COURT: It might have occurred that this was not the proper time. He was going to tell the union he was going to lay off people. The result of this tread tuber was to lay off people. I don't know what was in his mind. That certainly is a possible reason for not saying it. Maybe he

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didn't have the benefit of all this argument that we have had.

Quite apart from that, Mr. Conway told you this new tread tuber was going to lay off four or five people, and I can easily see how a labor negotiator would think this was not the time, that four or five people would be laid off at this time.

MR. AUERBACH: Mr. Conway also testified this morning the union never gave him a hard time on lay-off.

THE COURT: I understand that. That doesn't mean it is not the considered judgment of a negotiator that this is not the appropriate time to tell them, among other things, "You are going to have ~~four~~ more people laid off, gents, more than you have ever had."

MR. AUERBACH: Let me ask your Honor -- Let me pose this question:

Assuming that is true, why do we need to ask people to take off-standards on treads when that is no longer going to be a problem? If it is no longer going to be a problem, fine. Don't --

THE COURT: Maybe he thought it was better to ask them to take off-standards than tell them they are going to be laid off; there will be layoffs.

Go ahead and argue. None of these things seem to me to be -- they are like: should you pass or kick?

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MR. AUERBACH: My only point is, I can understand what your Honor is saying, but then I would think that the thing to do, the thing that he would have done: "Okay, we don't want to tell them about the new tread tuber; they will worry about more layoffs. But why do we need to ask them to give us an adjustment on off-standards when that problem is going to disappear? I can't rub them the wrong way to ask them to take an additional cut on something when in thirty or sixty days it is no longer going to be a problem."

I can't think of any negotiation where anybody, knowing that the problem is going to be eliminated --

THE COURT: It could be that that is the reason you make a big fuss about it, so you can get all centered on that problem and say, "All right, give up that. Let's take on something else."

This business of trying to second-guess the negoiations seems to be futile.

MR. AUERBACH: I am trying to show a pattern.

THE COURT: I understand that.

THE COURT: The same way I would put all the fault on the part of Judge Gurfein for that reversal. That is all human nature.

Are you saying when he went through and had all these equipment studies made, he didn't know what the efficiencies were and were not?

Of course he did. But when he is negotiating with somebody else, he would say, "It is all your fault." He will not say, "Part is mine and part is yours." That is a way of doing it.

Mr. Conway had another way of doing it.

MR. AUERBACH: Let me, if I may, now get to the job evaluation.

Mr. Clairmont said they could not do job evaluation. They were locked in, the contract and so forth.

I submit Mr. Conway's testimony in this area was most credible. Job evaluation was never any real problem. We were doing it. We were doing it before Mr. Clairmont came in on a thorough-going basis. We didn't get our way 100 percent. You never do.

THE COURT: But he never came -- he could never remember what he had accomplished this. He remembered a very happy relationship.

MR. AUERBACH: I think he testified that he got

many rates changed.

THE COURT: He did but he never said which they were. He gave an impression of a happy relationship which I am sure is how he remembers.

MR. AUERBACH: I think when you look at the record, he said that they got rates --

THE COURT: He said exactly those words.

MR. AUERBACH: He got rates changed. Sometimes he said the union would say okay and other times --

THE COURT: He never gave any specific illustration of anything. He gave what was his impression of how those happy days were.

MR. AUERBACH: Is your Honor saying you are finding that Mr. Conway never got any of these changes made?

THE COURT: There is no evidence of any significant changes having been made.

MR. AUERBACH: Your Honor, in the course --

THE COURT: My impression of Mr. Conway's testimony, I'll tell you, of the relationship with the union, pretty much bore out Mr. Clairmont's views.

As I heard him testify, I got the impression that Mr. Clairmont's views of prior labor relations were fairly accurate.

MR. AUERBACH: We are going back over a period in

excess of ten years, in the day-to-day workings. During the course of a week, there are dozens of decisions that are made. There are loads of grievances that he handles.

He said that there were but he never was stopped from getting relief on evaluation where the company felt they had a rate that was hurting them or it was too loose.

The Court: That, I'm sure, was his impression of those days.

Auerbach: When anybody asked him for a specific concession about this contracting out -- that certainly was a concession -- the union appears to have made that concession. That was the only one I remember.

THE COURT: I got the impression if I just heard Mr. Conway and nobody else and somebody asked me what the pre-Clairmont labor relations were, I would have described them pretty much as Mr. Clairmont described them.

I'm not criticizing anybody. It is a very happy way to live if you can make the plant run on that basis.

MR. AUERBACH: Well, obviously, they made it run until they lost their main customers. They were making profit and they lost their --

THE COURT: That we will get from Moody's. My impression was that long before Mr. Clairmont came, they were in financial difficulty. My recollection as to why they lost their main customers was that they could not meet the

price.

MR. AUERBACH: That is not in the record. What happened was that Philips, which was their main customer, decided to make their own tires.

THE COURT: They decided they could do it cheaper than buy it from them. That is my recollection. My recollection is that Philips decided they could make their own tires cheaper than they could buy it from Lee.

MR. AUERBACH: When a company gets big enough, they establish their own manufacturing facility and eliminate the profit that somebody else has.

THE COURT: All right.

MR. AUERBACH: That is not an unusual situation in industry. It is not because the people that they are buying from are inefficient.

It is like a liability insurance company when they are small in an area and they retain local counsel. When their caseload gets big enough, they put in their own department.

It is always more efficient to run your own when you got to a certain volume. This is why some people, when they have enough volume, become self-insurers. You need the volume; the little guy can't do it.

And so when Philips got big enough, they said,

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"Why give somebody else the profit? We are going to do it ourselves."

There was no indication that they were inefficient. They lost their main customer. There was no evidence of loss of profits in those periods. The fact that Mr. Conway doesn't remember what rate was changed 15 years ago or what rate was changed 11 or 13 years ago, you go on to the next thing. It was not a big deal to him.

THE COURT: I'm telling you what my impression was of his testimony. If there had been major concessions, you could have proved them. You did prove one.

MR. AUERBACH: That was in the contract.

What I'm trying to show, your Honor, is that this job evaluation, he didn't regard that as a major concession. This was in the routine working.

THE COURT: You are arguing to me that they had made major job evaluations before Mr. Clairmont came on the scene. That is what your argument is.

MR. AUERBACH: I didn't say major. Wherever they felt the rate was out of whack.

THE COURT: That they had accomplished this. Mr. Conway said yes, that is his impression. If there was anything substantial you could have proved that, but you didn't.

You represent the union. You have all the

evidence. You don't get an old man to talk, reminisce about something that happened ten years ago. ~~This is important.~~ If it's important.

MR. AUERBACH: I would like to get to the work rules, your Honor.

THE COURT: All right. Bear in mind that erroneously or not, I have found that it is my view that at the time those work rules were promulgated -- you are talking about the July 16th work rules?

MR. AUERBACH: To go into effect the 18th.

THE COURT: Wrongly or not, it is my view that at the time those were promulgated, management decided it is high time for a strike.

Mr. Moss won't like that --

MR. MOSS: I mind the way you phrase it. I think the company had decided at that time that they were not going to continue working the way they were. They were going to work under the terms they wanted to whether or not there was a strike.

THE COURT: I go further.

MR. AUERBACH: I would like to take the whole course of the negotiations. I say that we have established beyond any question of doubt that the negotiations, there were demands and they were holding to the demands throughout

the course of this period of time.

It makes it abundantly clear, irrefutably clear in our view, in our position, that the company made up its mind to provoke a strike, to push the people out, not on July 16th, and not on July 10th, but way before.

There are certain things, your Honor, you know, if I can get back to this, when I was a youngster -- I guess all of us were youngsters, and we sometimes remember if we got into a squabble or a fight that some teacher, or maybe it was our mother or an aunt, when we said, "The other fellow started it and did this and did that," and we would be very hurt if somebody said, "It takes two to make a fight."

Well, literally it does. You can't have a fight if there is not somebody else.

But I think we also know that even the most placid, even the most specific of us, could be forced into a fight. You can always be pushed and insulted. Circumstances can always be made that if somebody wanted to get you into a fight, he could. You might not win, but he could.

I say that, and we ask your Honor to hold, that anybody -- you don't have to be nearly as smart as Mr. Clairmont -- can force a union to strike. No ifs and buts that you can force them to strike and you can force them to stay out. You just have to make it hard enough.

Most businessmen are concerned with the opposite, how to keep them from striking and when they are out, to try to get them back soon.

They started off with a 25 percent -- look at their original demand: 25 percent wage cut, job evaluation unilaterally.

And I say, it is our position, that the whole tenor, and this is not a matter of second-guessing, you could say was it smart or not smart to put in -- you want to take a holiday away -- you could say, is it smart or is it good tactics? Should we punt or pass or kick or run?

We start off by asking for a vacation cut-down, but you know there are certain things you can't possibly get and again, not only can't possibly get but ~~their~~ they're big, fat, red flags to the union.

You could put in taking away a holiday and figure, "I got some trading room. We'll pull that out on the third round when we can negotiate something for that. We will drop that and the union will drop something else."

But I ask your Honor to take judicial notice of the times, go back as far as we want: Let there be 25 or 20 percent wage cuts in this arena in that period of time? I say when you talk about a bilateral as opposed to a unilateral job evaluation, this is something that would

strike terror into the hearts of any union. I'm not talking about theunion officials.

There are good and valid reasons for people to join unions: Not because they don't want to work hard or not because they don't want to give a good day's work for a day's pay, but they don't want to go back to the time when somebody gave loyalty and worked hard for 40 years and I got a 20-year old guy who can out-produce you. That is why seniority is important.

It is tenure. It is the same thing that the civil service has.

THE COURT: And judges.

MR. AUERBACH: That's right. It is not something for somebody who does not want to work. It is something that elementary justice calls for.

So, when they talked about a unilateral job evaluation program, it was a phony. It was strictly a phony. And for Mr. Clairmont to sit on the stand before your Honor -- and he is a shrewd business man and he says he has dealt with unions -- I say he was lying and he was not lying based on poor memory or poor recollection.

No businessman of Mr. Clairmont's experience could sit there under oath and tell you that he was proposing a genuine job evaluation program that a union could possibly

consider accepting because none of what he was offering was bilateral.

The union minutes are clear. "You want the Cooper Plan? Is that what you are talking about? Okay, we will consider it."

I think Mr. Conway's statement that he was confident if the company had said, "Work out a fair bilateral job evaluation program," he could have done it.

So I say this was a charade, this was an untruthfulness on Mr. Clairmont's part. No union is going to accept this. No union can -- even the simplest and most honest union.

Nobody can say, "We will let the company put it in." If you do that, you can go back to pre-union days when the boss would come around and say to you, "Your rate is being cut from $2.50 an hour to $2.00 an hour. If you don't like it, go."

Then the reason for joining a union is good. This is of the essence. This is not a matter of trading and Mr. Clairmont knew it.

He could not be fooled. He could not be under a misapprehension. Mr. Clairmont could never have had anywhere a job evaluation program in any contract that he had that was unilateral.

llpgesb

"Never mind." He says he intends to consult. This would be great. I would be the greatest lawyer in the world -- an independent expert -- I would be the greatest lawyer in the world if I could hire the judge and try my case and everybody knew that he was mine.

I could also say, and people said, "Let's go to my lawyer and see what he says." Well, nobody else is going to do it and to say that he is going to consult an independent expert that he is paying, no.

Then you might as well tear up your union contract. The most reasonable union in the world couldn't agree to that.

I say, how can we then say that he was really bargaining? Your Honor says we can't second-guess him. This is not a matter of second-guess. This can't exist.

When you add that to the 25 percent which he reduced all the way down to 20 percent, I ask you to consider this, your Honor. Then you add -- and your Honor has found it was a lockout -- that last paragraph 9.

In case I forgot, if the job evaluation doesn't get you and the 20 percent doesn't get you, then we have a catchall. Anything else we think of, we will put into effect. We will discuss it with you and then we have the right to put it into effect.

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All right, your Honor said Mr. Clairmont said, "Okay, I wanted to push them out." He didn't tell you that he had made up his mind to push them out with that job evaluation program.

But I would like to point out to you, he never receded from his unilateral job evaluation program starting in May. You know, you didn't even need the 20 or 25 percent wage cut. If you got the unilateral job evaluation program, you go as far as you want -- just down to the minimum wage.

He posed things that the union could not even begin to agree to, no union. This union, or any other union. The most reasonable union in the world. And he said, "Okay, I'm going to push them out. Did he ever change anything?

We can all understand that where a union has been intractable and unreasonable -- there are all types -- when we have advised clients, "Let them walk. The crazy guys are asking for $2.00 an hour across-the-board. Forget it. You can't even talk to them. Let them walk awhile."

That is when the union has asked for the sky, when the union demands were unreasonable.

That is the charade. That is the brilliance of the man. What did the union ask for that was so unobtainable when the union said we will work for our old contract? How often does a union say that?

THE COURT: Mr. Clairmont's view was that the old contract was bankrupting the company. I don't know whether it was right or not but that was his view.

MR. AUERBACH: If your Honor is going to accept what Mr. Clairmont says, then, of course, we have no case to try and no argument to make, but I say to your Honor that this contract, this old contract, couldn't be bankrupting the company because the company was going bankrupt.

You can't run any company without sales and if you do, you cannot run that plant efficiently and make a profit on 250 people, if you got 250 people, that somehow or other you can get an exemption from the Minimum Wage and Hour Law and say come in as coolies and work free.

We produced testimony that if they worked for nothing, certainly if they work for the minimum wage, that company would have gone bankrupt. We would have said that company could not make it. That is from the beginning.

But, your Honor, I think that we are required, or Mr. Clairmont is required, to say something more than, "The contract was unreasonable." Where did he show us it was unreasonable?

You have said Mr. Conway could not remember 12 years ago what rates he got corrected. I've said that Mr.

Conway didn't think he was earning any medals in getting these rates simply because this was run-of-the-mill stuff. This was not a problem. It was nothing to make notes of, nothing to write reports on.

He did this with meat and drink. It happened all the time. He didn't know that 12 years from now, he would be in a court and somebody would say, "Hey, this is a lot of important things that you were doing."

THE COURT: That is why I said his testimony obviously can't have any weight because he could not know the answer. But if it is true, ~~he would~~ you could have ~~approved~~ proved them if they were important.

MR. AUERBACH: We don't have records of these job evaluations that go back 12 years ago. Nobody keeps these.

I have negotiated things and grievances with unions or with companies five years ago and it is done and that is the end of it. The rate is changed or the incentive is changed and that goes on.

It is gone because once the bookkeeper puts in a change in the rate -- it is the thing that happens all day long.

THE COURT: The bookkeeper puts in the change in the rate that is there. You want to prove it, get the books.

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I don't think it is so important anyway. I can't see why you didn't take the trouble to prove it.

MR. AUERBACH: If we are going to say that Mr. Clairmont is gospel and whatever he says is the written word and you don't look behind it, fine, then it is all right to find that he said the union contract was killing him.

He didn't point out one thing that was unreasonable in the contract. He didn't point out one thing that was over-expensive. He talked about his job evaluation, which was a unilateral phony job evaluation.

I say this was all camouflage. It was all untrue. He could have gotten it if he were interested in a real job evaluation; he could have gotten that. The union made it clear that they would go along on it, they would consider it. They never said no to any fair job evaluation program. They never said no.

I don't think there are any specifics in the record, no specifics.

I only ask you to use the same yardstick with Mr. Clairmont as you are applying to the other witness because he is here. He has the contract. That is here.

"Where was there anything that was unfair that you had to get rid of, that you could not get rid of, in the

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contract, Mr. Clairmont?"

He showed nothing. He just kept talking about job evaluation.

I don't want to take the time to point it out but I don't recall his saying, "I would have given up on everything." He never said it then.

"If you could only get job evaluation." That was the big deal.

Well, your Honor, anytime I want to break a union, if I can get unilateral job evaluation, I don't need anything more.

MR. AUERBACH: I could go right down to the minimum wage for my workers. My workers could just as well have the union comein and say, "We are withdrawing. No union here, open shop for everybody." That is what he was asking. That is what he knew they could not give. No union could give

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that. No union could give on that kind of demand. He never backed off from that demand. He never backed off from the 20 per cent cut. He never came in with anything that any union in this country, and, I repeat, anywhere in this country, except somebody that is willing to be on the take -- but any honest union, big, small, placid, belligerant, any one you want, could take -- he never gave anything.

This is not a matter of judgment, your Honor. This is not a matter of discretion. There is nothing in Mr. Clairmont's testimony. There is nothing in the record, in fact, it is all to the contrary, where Mr. Clairmont ever indicated a willingness to settle on anything that any union could go along on, that the weakest the most placid union could go along on.

I say, it is not just a matter of whether he should have brought up something in negotiations or not. He never gave them amything that they could agree on -- I mean that they could legitimately agree on.

It is not a matter of taking away a holiday. It is not a matter of cutting vacation. It is not a matter of trade. He never backed off from any one of those. They were not interested in settling. They were not interested in keeping the plant open. If they say that Conway was not efficient, Conway was not good, Conway gave away the shop,

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they could have brought him in just like they brought in Barkett. Mr. Conway didn't have to be kept on.

As a matter of fact, I ask your Honor to find that Mr. Clairmont must have known about the policy of compulsory retirement at sixty-five -- Mr. Conway's age was certainly on the company records -- and that before he started negotiations Mr. Clairmont could have easily gotten rid of Conway.

You can hire tough labor relations people. You can hire tough industrial relations directors. They are not hard to find.

We can't quarrel. He never did say that Mr. Conway was not doing his job. He talked. He even said the people that caused all this are gone. There was nothing that he ever said that was critical of Mr. Conway. Whether he authorized it we don't know, but he certain acquiesced in keeping Mr. Conway on.

THE COURT: He authorized him, obviously.

MR. AUERBACH: So he authorized to keep him on. He was asked to stay on. If that is the situation, how come neither he nor Heinrich ever asked -- the most tyrannical boss will sometimes ask; I listen to him; we all know; we have all had clients that are tough businessmen and don't listen to their lawyers or accountants -- once in a while

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they ask you; again, they may not listen when they ask, but they all pick some brains.

THE COURT: Mr. Conway testified that he was in these meetings where there was discussion over the telephone.

MR. AUERBACH: I asked him specifically, did Mr. Heinrich or Mr. Clairmont ever say, "How can we ameliorate the situation? How can we get the people back? How can we avoid this?"

Nobody ever asked him, for a simple reason: they were not interested. He was not brought in on the work rules. They were handed to him: "Here, Conway; give it to the people. This is what it is, no change."

I would also like to point out to your Honor that if at the time the work rules were given out and Clairmont said, "Okay, we will give them a day; we will push them", and the union came back and said, "We will continue under the old contract," wasn't this an opportunity for Heinrich and Clairmont to say, "Well, we want something a little better than the old contract"? They didn't say anything. They said, "This is it, boys. Start walking."

I don't know, your Honor. You found a lock-out. There is nothing to indicate that they tried to avoid an impasse. Everything was done to exascerbate the situation. It seems to me this is the classical case of push-out and

keep-out until the time runs out when we can give our notice on the pension and welfare agreement. This is what was done. If it was a lot of trouble to save two million dollars, two million dollars even today is still a lot of money, and it certainly was in those days.

So therefore, your Honor, I ask you to give consideration to what we have said and possibly not to find that Mr. Clairmont is a God-given example of probity and veracity.

THE COURT: I didn't say Mr. Clairmont was a God-given example. On the contrary, I said I found him to be truthful, but I didn't feel comfortable in relying too heavily on him, because I didn't trust my ability to see through his overpowering personality.

I found Mr. Heinrich, on the other hand, to be truthful, and I see you didn't challenge that in your argument. And so --

MR. AUERBACH: Only because Mr. Heinrich didn't testify to -- the only thing Mr. Heinrich testified to, your Honor, as I recall, was as to the order for the tread tuber. He was only on for a short time. He did not -- he was not questioned about the other aspects.

It wasn't that I didn't challenge him. There was no testimony about those areas by him to challenge.

THE COURT: I can't remember his testimony in

detail. Maybe I am thinking of his nodding his head during the trial.

My recollection of his testimony -- I will check it -- was that, the impression I got from it was that it was contrary to this theory of yours.

MR. AUERBACH: I believe, your Honor, that the only testimony, basically the only testimony from Mr. Heinrich was in regard to the tread tuber. That was the general area in which he said what Mr. Hess had said was correct and gave us some financial information about it.

THE COURT: You may be right.

MR. AUERBACH: Therefore, I can't challenge testimony that he didn't give.

THE COURT: Obviously. Maybe I am misremembering. This could easily be the impression I have from it.

On that issue, do you remember anything he said, Mr. Moss?

MR. MOSS: No. I have a couple of things I would like to say, your Honor.

THE COURT: Just on that one issue.

MR. MOSS: Mr. Heinrich talked about the hot line. He talked about his relations with Clairmont. The only thing he testified to was when he was put on at Mr. Auerbach's request, about the tread tuber, and he testified a little

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more than just the price.

THE COURT: He talked about the hot line.

MR. MOSS: And Mr. Clairmont's interest in what was going on in Conshohocken.

THE COURT: I ~~get~~ got the impression that Mr. Clairmont was interested in trying to deal with this situation.

MR. MOSS: I would like to suggest that Mr. Heinrich has been here on every single trial day, and if the plaintiffs had wished to call him as a witness, he was available to them at any time. Any talk now that they didn't have a chance to test his credibility or understand his view of the case comes late.

THE COURT: He was just answering. He was not saying that. Mr. Auerbach was merely saying Mr. Heinrich didn't say what I remembered him having said.

MR. MOSS: I ~~understand~~ understood you to say that you found Mr. Heinrich a credible witness. He could only have been a credible witness about what he testified to, and that is in the record.

THE COURT: My recollection of that testimony was that it went counter to Mr. Auerbach's theory, but maybe I am assuming that is what he would have said.

MR. MOSS: I can assure you that if he had testified, it would have been contrary to Mr. Auerbach's theory.

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THE COURT: I am sure of that. That is not the point.

MR. MOSS: Your Honor, I think this has been a long-drawn-out affair. I would not like, however, in view of the fact that your Honor's declarations of your present feelings about something making it unnecessary for me to argue at any great length -- I do not wish to argue at any great length. I wish only to make two or three points, if I may, because I consider the record to have been substantially misstated in Mr. Auerbach's argument, and I would like to make, I believe, three or four short points.

One point is with respect to Mr. Barkett and the off-standards on treads and the enormous significance which Mr. Auerbach gives to that.

The record will show, and the testimony of Mr. Hess and Mr. Garber, that off-standards ~~in~~ payments and off-standard possibilities apply to many situations other than treads. Mr. Barkett said that off-standards was greater in treads than elsewhere. That statement of his was not to the effect that the off-standard payments applied only to treads.

Also, the fact that Mr. Garber testified that the union had agreed to reduce the off-standard payments, had offered to reduce the off-standard payments from one hundred to ninety-five per cent, but the company had asked for ninety

per cent.

As far as this wage decrease business is concerned, no backing off had ever taken place by the company, aside from the fact that the company backed off from twenty-five to twenty. The union never backed off, from Mr. Hess' testimony and Garber's testimony that they would never have agreed to any wage decrease, although the Dunlop situation, whether it was as Mr. Garber testified, something very mixed up et cetera et cetera, or whether it was as stated in the letter to the union signed by Mr. Conway and Mr. Heinrich, which is in evidence, that it was a ten per cent wage reduction.

The union never at any time offered to accept any kind of wage reduction to see if that would get things, as Mr. Auerbach likes to say, off dead center.

On job evaluation, I take great exception to Mr. Auerbach's statement that they never backed off from a unilateral job evaluation program. As the minutes show, as the testimony shows, as Mr. Conway testified, as the proposals show, the company backed away from its unilateral proposal to a proposal which was in all respect similar to the Cooper contract, which came up today, with the exception of the joint committee, and it provided for the mutual selection of a professional engineer, just as the Cooper contract did,

for the purpose of making a final decision.

THE COURT: And the American Arbitration Association was --

MR. MOSS: That was if the union and company would not agree, they would have a list, and each was going to strike off until one was left.

Also, the Cooper contract that Mr. Auerbach read in was word for word the company's proposal, with the exception of the joint union committee.

Finally, Mr. Auerbach has apparently entirely forgotten Mr. Garber's testimony, which was that if the job evaluation had been the last open issue in the contract, they would have been able to live with the company's last ~~proposition.~~ proposal.

Finally -- and I do not wish you to think that I consider these arguments in any way to be the sum total of the arguments of the company -- I shall do a lot better than that.

Mr. Clairmont going ahead with the agreement of the Garthwaites to have Mr. Conway negotiate the contract seems to me in itself to be an indication of the fact that he was not preparing a Machiavellian charade by which he was going to play a role before the union which would allow him to cover up his devious intention. If Mr. Clairmont had ever intended

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to conduct a charade for two and a half years or so based upon unsupportable demands, it seems, to the defendant, anyway, hardly likely that he would have made the chief spokesman for him with the committee a person in whose competence as a previous labor negotiator he had no confidence and would have substituted for him somebody who was ~~previously~~ obviously more suitable, to his thinking.

I would like to make one more point, which is a point of argument rather than a point of law.

The theory of the plaintiff's case of a charade in labor relations, labor negotiations, is the kind of complaint ~~by~~ for which the National Labor Relations Act was put into effect, and complaints of this sort, theories of this sort are the bread ~~&~~ and butter of international unions, and it should have been presented to the National Labor Relations Board.

They made a halfhearted attempt to file a complaint, to substantiate the complaint in July of 1963, but the union was dealing with what they now claim to be a charade from that date right straight through until December of 1964. It ~~would~~ never ~~repeat~~ repeated it.

The place to have somebody who is allegedly, by the ~~court~~ courts, at least, somebody who has expertise in labor negotiations and in sizing up people's motivations and whether they are bargaining in good faith or not is the National Labor

Relations Board. That is their stock in trade. Nothing was done about that. The issue here has been made clear many times.

It is the defendant's position that the plaintiffs did not make a case in February and have not made a case now. I do not mean this to be considered to be the defendant's argument in this respect, but much of what Mr. Auerbach has said today, much of his statement of the testimony is absolutely balderdash.

Mr. Clairmont testified also as to what he thought was wrong with the union contract and what he felt was necessary to put the company back on its feet.

The unconsidered issue in this case, the unconsidered situation, which was the precipitant for all this matter, was the ~~national~~ financial status of the company and its declining position, and everybody in the old regime -- Mr. Conway, Mr. Hess for the union, their absolute unwillingness to look the facts in the face.

Things had been so good so long that they could attribute the decline in the company's fortunes only to the machinations of Mr. Clairmont.

Mr. Auerbach's weeping about the union and how they ~~need~~ needed to protect themselves and to live under the old contract and things like that, that indicates their total refusal to

look at the situation which prevented the company from continuing, and the union -- if anybody wants to talk about adamance, the union, as far as the minutes show, showed no movement in any way to accommodate what the management of the company thought were minimum demands.

I am prepared if, as I understand it, your Honor's intention is to have the plaintiffs file a brief if they wish, and that therefore you will either let me file a brief if I think it necessary to reply or will write me as to whether you wish to have a brief filed. I am entirely prepared to furnish a brief under those circumstances at any time.

I would wish, however, your Honor, that in setting the time for the filing of briefs, you would bear in mind that this case has been around for a very long time. The events occurred eleven, almost twelve years ago now. Mr. Conway is seventy-six years old. Mr. Heinrich is retired and lives in California, and Mr. Clairmont is roundabout the world. Accidents happen. I would like a schedule to be set which has some reasonable hope of bringing the case to a conclusion within the shortest time fair to the parties.

THE COURT: Do you want to say anything else?

MR. AUERBACH: As far as what the union is prepared to do, the minutes, we put that in our previous brief. We will put it in again, that the company kept shifting position.

THE COURT: I have heard arguments on both sides.

MR. AUERBACH: Just in his remark about one of the offers that was made by the company, which they later on withdrew, about job evaluation., He says the same as Cooper, but there was not a joint committee, I think Mr. Garber pointed out to your Honor that if the union can't see the work product, how can you argue?

That is why we have things like discovery and inspection. I can't see the other fellow's books. How can I get my accountant in to counter his accountant?

So without having a joint committee, it is meaningless to haye an impartial person.

THE COURT: I will add to this argument: this argument has been helpful, but, as I see the case, it boils down to this:

The plaintiff has developed a theory as to which it is possible here to argue that Mr. Clairmont adopted the course you suggested.

As I told you at the end of the previous case, I was not persuaded, more probably or not, that that was the fact. We had the benefit of Mr. Conway's testimony. Elminating all of Mr. Conway's expressions of opinion and just taking it to the facts he described,the events he described, it seems to me to be more consistent with the defendant's

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case than the plaintiffs' and reinforced my feeling that there was no such plan from which Mr. Clairmont was acting.

Mr. Moss raised a point: it is unlikely he would have kept Mr. Conway if he had this plan, to be his negotiator. Well, as far as the reasons for his being the negotiator are concerned, it seems to me you can argue that both ways. Mr. Auerbach argues on the one hand and Mr. Moss argues on the other, and you seem to cancel each other out.

But one thought has occurred to me, namely, it is perfectly obvious that Mr. Conway knew that, we must assume he knew that -- Mr. Clairmont should have known that Mr. Conway was not sympathetic with his views as to how to handle the union, and if in fact he had a nefarious plan, he would certainly not have let Mr. Conway in on the company councils while various plans were being hatched out and worked out.

Mr. Conway had tenure. You can argue that he could not fire him without causing suspicion or trouble. All he had to do, pointing to Mr. Auerbach, was to let him go.

Under those circumstances, it is incredible he left him there. It seems to me if he was carrying out the kind of plan plaintiff has ascribed to him, that is what he would have done.

In that connection, I was very impressed with Mr. Conway's testimony that never during the whole time this was

going on did he ever discuss his suspicions or fears with anybody in the plant, despite the fact that he expressed himself to be on highly friendly terms with Mr. Heinrich. Having observed Mr. Heinrich, I can see that that is very likely true. He expressed himself as being on friendly terms with Mr. Barkett and Mr. Miles.

In any event, I am not saying he complained to these people that they were -- I regard them as on the other side. It is absolutely incredible to me that this kind of plan could be going on under his nose without his knowing about it and had at least come to his attention affirmatively, and it is incredible to me that he would never have mentioned it to anybody. He says he didn't.

That reinforces my view that there was no such plan. In fact, Mr. Claimont's proposals and negotiations were not effective to bring back the union, obviously, but to say that they were planned to have a contrary effect, in my view the plaintiff has not persuaded me of that. That is what I gather from the evidence.

This all is subject to reconsideration, after you have had an opportunity to marshal your arguments in writing.

When will I get the minutes?

MR. MOSS: I was going to make arrangements of my own with the reporter to get the minutes on an expedited

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basis. I had arranged on Monday to have them on a daily basis, and the note which was supposed to be delivered, I believe, to Mr. Golden, who is right here, came into his mail box after he started the case here, so that the minutes have not been available up to now; but I intend to ask Mr. Golden, especially in view of the fact I asked on Monday, long before anybody was assigned, that they be made available on an expedited basis, for which we will be glad to be responsible.

THE COURT: Whenever they come, you certainly ought to do your brief in two weeks.

MR. AUERBACH: The problem is this: we are not authorized to pay for expedited copy.

MR. MOSS: We will pay for it. We want to get the case over with.

THE COURT: You will get the benefit of it.

MR. MOSS: All right. You will get the minutes in a week, give or take. Two weeks after you get the minutes ought to be enough for you.

MR. AUERBACH: Can we make it three weeks? I will go through the whole record. From the day I get the minutes --

THE COURT: Three weeks from the day you get the minutes, and there will be no further extensions. Within a week after that, Mr. Moss will hear from my chambers whether

I want a reply brief or not.

MR. AUERBACH: I assume you will also notify us of the decision that you made with regard -- Had you wanted any further briefs from Mr. Moss?

THE COURT: If I don't, you will get a decision. I won't decide against Mr. Moss without letting him --

MR. AUERBACH: I understand that.

THE COURT: I am undertaking to decide this case within a week after I get your brief. If your brief causes me to have doubt as to my decision, I won't make it, but I will notify Mr. Moss and you.

That stands: three weeks after you get the minutes from the reporter.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
FEB 24 1971
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S. D. OF N.Y.

#37431

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

-against-

LEE NATIONAL CORPORATION,

Defendant.

66 Civ. 1154

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METZNER, D.J.

In this suit by an international union (the "Union"), against an employer (the "Company") for alleged breaches of

collective bargaining contracts with respect to employees at the Company's former Conshohocken and Youngston plants, the complaint alleges three claims. The Company has moved for summary judgment as to the last two of those claims, one of which (2nd claim of complaint) seeks either (a) arbitration of the Union's claim to sums allegedly owed by the Company to certain of its former employees as a special distribution upon the Company's permanent discontinuance of operations at the Conshohocken plant, or (b) judgment for $2 million. The other seeks (a) $2 million in damages for alleged breach of contract arising from the Company's discontinuance of a life insurance plan[1] for its former retired employees, or (b) arbitration of this cause of action. For the reasons stated below, defendant's motion for summary judgment dismissing the second cause of action is granted to the extent that the claim of right to arbitration is dismissed; otherwise it is denied. Defendant's motion is granted as to the third cause of action.

For many years the Company -- through its Lee Tire Division -- manufactured automobile tires for distribution and sale throughout the country. The tires were made at its Conshohocken plant and sold either through its sales branches through its wholly-owned sales subsidiary (Lee Tires Centers, Inc.), or through retail outlets of the Phillips Petroleum Company,

The Pep Boys, and a few other purchasers who sold Lee-built tires under their own labels.

At all relevant times a majority of the Company's production and maintenance employees and test drivers were represented for collective bargaining purposes by Local 227 of the Union pursuant to an agreement between the Company and the Local, hereinafter called the "Working Agreement." All other employees were expressly excluded from the Working Agreement and were not represented by any union. The Working Agreement covered such matters as wages, hours, and working provisions, and it also contained an arbitration and grievance procedure. The last Working Agreement was effective from June 30, 1961 to July, 1963, when it expired.

On April 6, 1950, the Company entered into a separate agreement with Local 227 under which the Company established a non-contributory pension plan for certain of its employees, and an agreement whereby the Company would provide insurance coverage to employees covered by the Working Agreement. Later, in 1959, two further agreements for workers' benefits were reached: effective July 1, 1959, the Company provided a plan for supplemental workmen's compensation benefits for employees covered by the Working Agreement and also a plan for paying a service award and a special distribution on discontinuance of operations to certain of those employees upon the termination of their

employment under certain circumstances and conditions. Finally, there was what may be described as a codification: On June 30, 1961, these four agreements were brought together and modified into a single agreement, effective July 1, 1961, which will be called the Welfare Agreement.

During this period the labor-management relations were calm, but it was the calm before a storm. About July, 1962, Maurice H. Clairmont acquired working control of the Company. The Union contends that Clairmont was and is a "Corporate Raider," whose procedure, allegedly followed in this case, is to take a marginally profitable company, liquidate its business operations, and realize a substantial profit over and above the purchase price paid by him for its shares. The Company denies all this.

Whatever Clairmont's intentions, he was faced with the Working Agreement and the Welfare Agreement. The expiration dates of these agreements did not coincide: the Working Agreement was to run from June 30, 1961 to June 30, 1963, and thereafter renew itself for yearly periods unless proper notice of termination was given (Working Agreement §18.01); and the Welfare Agreement from July 1, 1961 to June 30, 1966. However the Welfare Agreement provided that it could be reopened after May 1, 1964, by either party for renegotiation and that failure to agree on new terms within a certain period of time would permit either party to

terminate the Welfare Agreement upon stipulated notice, together with the Working Agreement, which would leave the Union free to strike. The Working Agreement also provided that it could be terminated by either party upon stipulated notice if, after reopening, the Welfare Agreement should be terminated.

The Company came upon hard times, with profits low. On April 16, 1963, the first day when notice could be given by either the Company or the Union of a desire to amend the Working Agreement prior to its otherwise automatic renewal for one year on July 1, 1963, top executives of the Company met with officials of the Union and its Local 227. Lengthy negotiations followed. The Company argues that it was trying in good faith to keep on its feet in spite of hard times. The Union argues that the negotiations show that the hard times were <u>not</u> attributable to the employees or the beneficial provisions of the Welfare and Working Agreements.

On June 29, 1963, one day before the Working Agreement expiration date the Company informed the Union that the Company would continue to maintain the same wages and working conditions contained in the expiring Working Agreement until formal notice by the Company. The Union responded that its members would work on a day-to-day basis under the provisions of the old contract while negotiations continued. Clairmont, at a bargaining meeting on July 3, 1963, suggested that the Union accept a 25% wage cut

and a productivity sharing plan in return for a profit sharing agreement. The Union -- perhaps to no one's surprise -- refused to go along with the wage cut. However, the Union did offer a one-year extension of all agreements, at the end of which time the Union would agree to accept a wage cut in proportion to any cost increase chargeable to labor only. Clairmont rejected this offer. The Union also suggested that it would take 5% of its wages in Company stock, but this proposal was also rejected. Finally, the Federal Mediator (who was present at this as well as many other bargaining sessions) suggested that both sides submit to either binding or nonbinding arbitration. The Union accepted this proposal but the Company rejected it.

On July 12, 1963, the Union indicated that it would agree to a substantial roll-back of the 1961 benefits, vacation pay formula, and contract termination date. The Company reply on July 16, 1963, informed the Union that it would no longer even continue in force the old Working Agreement but instead would put into effect new terms and conditions of employment which were less favorable to the workers -- e.g., wage reduction of 20% -- and which were designed -- says the Company -- to put the Company in a more competitive position. On that same day and in response to this new Company position the Union began what became the longest work stoppage (the Company calls it a strike but the Union calls

it a lockout) in the history of Pennsylvania.

On May 1, 1964 (during the strike), the Company notified the Union that it wished to open for renegotiation the provisions of the Welfare Agreement, which that agreement permitted; the Company wished to reduce the Union benefits provided by the existing agreement; the Union did not agree and so the Company gave its 60-day notice that it desired to terminate the Welfare Agreement, which was terminated on September 8, 1964.

On September 18, the Company notified its retired employees that the Welfare Agreement was terminated and their their insurance coverage under that Agreement would terminate at the end of September, because premiums were only paid until then. The Union immediately objected and on October 2, 1964, the Company announced that it would continue modified insurance coverage for retired bargaining unit employees and other Company employees. This program the Company labelled as "voluntary," and it was terminated as of June 1, 1965.

Meanwhile on November 30, 1964, the Board of Directors of the Company voted to discontinue all operations at the Conshohocken plant; on December 10 the Company reported this decision to the Union, which stated that it would continue to picket the plant. On December 14, 1964, the Company sent letters to its employees formally announcing that their employment by it

was terminated. Picketing continued until a subsidiary of the Goodyear Tire & Rubber Company actually occupied the plant in July of 1965, under a lease from the Company.

On July 14, 1965, the Union notified Local 227 that it was terminating the strike against the Company and discontinuing strike benefits. On November 4, 1965, the Union revoked the Local's charter as of November 30, 1965. The Union now claims that it is the successor to all of the assets, liabilities, right, title, and interest of the Local. United Rubber, Cork, Linoleum and Plastic Workers of America v. Local 227, United Rubber, Cork, Linoleum and Plastic Workers of America, Court of Common Pleas, Penn. (#66-10963) Mar. 5, 1968), affd. per curiam, ___ Pa. ___, ___ M.B. ___ (Oct. 9, 1969).

Against this background we turn first to the Union's second cause of action, which seeks arbitration of its claim for severance pay (i.e., a special distribution upon the Company's permanent discontinuance of operations at the Conshohocken plant) or, in the alternative, judgment for $2 million. No valid basis is shown for compelling arbitration of the claim. There was no general arbitration clause in the Welfare Agreement. Article II, Section VI, of that Agreement, which dealt with the separate subject matter of the Union's second cause of action -- special distributions upon discontinuance of operations -- did not provide

for arbitration of disputes concerning such special distributions. Although other separate and separable provisions of the Agreement provided for arbitration of disputes with respect to other matters (e.g., differences as to supplemental workmen's compensation benefits), they have no application to the subject matter of the Union's second cause of action. Accordingly we are powerless to compel arbitration of the issues presented therein. United Steel Workers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960); see John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 546 (1964).

Nor is there any merit to the Union's argument that the question of arbitrability of the issues has been adjudicated by the Third Circuit Court of Appeals in a suit between the same parties in United Rubber Workers v. Lee Rubber & Tire Corp., 394 F.2d 362 (3d Cir. 1968), affirming, 269 F. Supp. 708 (D.N.J. 1967), and that we are bound by that adjudication on principles of res judicata, collateral estoppel, or stare decisis. That action did not present the question of arbitrability of claims for severance pay under the Welfare Agreement. It raised issues under other separate articles of that Agreement which, as we have noted, contained procedures that are inapplicable to the issues before us. The decision would not therefore operate to require arbitration of the issues here. Bloch v. Mill Factors Corp., 119

F.2d 536, 538 (2d Cir. 1941).

In any event the Union has never notified the Company, prior to the institution of the present action in April 1966, of its desire to submit the severance pay dispute to arbitration. On the contrary, the Union's counsel has more recently expressed the desire to proceed immediately to trial in this court. Thus it would appear that if the Union ever had a right to arbitration that right has since been waived. The Belize, 25 F. Supp. 663 (S.D.N.Y. 1938), appeal dismissed, 101 F.2d 1005 (2d Cir. 1939) (per curiam); Krauss Bros. Lumber Co. v. Louis Dossert & Sons, Inc., 62 F.2d 1004 (2d Cir. 1933).

Turning to the merits of the Union's claim for severance pay, the Company basically argues in support of its motion for summary judgment that under the Welfare Agreement, discussed above, the special distribution was only payable "In the event that all operations at the plant covered by this Agreement shall be completely and permanently discontinued prior to the termination of this Agreement." (Agreement, p. 2). But, says the Company, the Welfare Agreement expired on September 8, 1964 and the Company did not completely and permanently discontinue its operations at the Conshohocken plant until November 30, 1964. Since the Company did not discontinue operations until after termination of the Welfare Agreement, it contends that no

severance pay is due under the latter agreement.

The Union answers that Clairmont wanted to sell the assets of the plant, because the plant was worth more under his liquidation program, provided the Company could avoid substantial obligations to the Union for severance pay and the maintenance of certain insurance benefits pursuant to the terms of the Welfare Agreement. The essential theory of the Union's case is that the Company perpetrated a fraud upon its Local by unilaterally imposing conditions which provoked and forced a strike, thus making it appear that the Company was shut down by unreasonable Union members striking over simple economic issues. Then, during the course of this forced strike, the Company's plan was to terminate the Welfare Agreement two years before its ordinary termination date, pursuant to procedures providing for such early termination. The Company is liable, says the Union, because it in reality shut down the plant on the day it forced the Union to strike, or at least sometime before September 8, 1964, the date when the Welfare Agreement was terminated.

Thus the Union must prove that the discontinuance of plant operations by the Company actually occurred at or about the time when the strike commenced, which was on July 16, 1963, rather than on November 30, 1964, when the Company's Board voted to discontinue operations. Upon the record before us the Union

appears to have almost no chance at all of sustaining this heavy burden. Quite aside from testimony of Company officials as to their intentions, there is overwhelming evidence that the Company, after the strike began and even after the Welfare Agreement was terminated, was struggling to resume operations. For instance, it continued after September 8, 1964 to maintain at the Conshohocken plant a large staff (some 55 persons) of executive, administrative, sales and technical personnel. Salesmen continued to promote and sell Lee tires, to conduct sales training programs, and to service Lee tire sales branches. There was no attempt to dispose of the plant or any of its tire-making equipment. On the contrary, maintenance personnel continued to keep the plant and machinery in condition for resumption of tire manufacture as soon as the strike should end. Laboratory personnel continued to redesign molds for development of new tire styles for future production. During the entire period existing customers were supplied by arrangements with Mohawk Rubber Company and United States Rubber Company to manufacture Lee tires from Lee molds.

The Union's claim furthermore appears to us to be but a belated rationalization, which is inconsistent with its own earlier position. In January 1965, for instance, the Union contended that the discontinuance of operations had occurred on December 14, 1964. Its original complaint, filed on April 25, 1966,

alleged that the Company had ceased operations on or about July 1, 1965. A complaint filed by it in the Pennsylvania Court of Common Pleas alleged that it discontinued in January 1965. It was not until September 1967, after the weakness of its position became apparent, that the Union took its present stance to the effect that the July 1963 strike constituted a "lock-out" and a "complete and permanent discontinuance of all operations at the plant within the meaning of Article II, Section VII, Special Distributions on Discontinuance of Operations".

Notwithstanding the apparent flimsiness of plaintiff's claim, we are precluded, under the interpretation of Rule 56 which governs in this Circuit, from dismissing the second cause of action as a matter of law. Despite the weakness of the claim, it does present an issue as to the intent of the Company, i.e., whether the management purposely provoked or forced the Union into striking on July 16, 1963, with the intent of permanently closing down operations and never thereafter reopening. If the record before us at trial were the same as that before us on this motion, judgment would be entered in favor of the Company. At this stage, however, since a material issue has been presented as to the management's intent, we cannot act summarily and we must permit the case to go to trial. Bolgow v. Anderson, ___ F.2d ___ (2d Cir. Sept. 2, 1970); Klotzschkin v. Driver, 411 F.2d 436 (2d

1969); United States v. Penn & Co., 342 F.2d 383, 385 (2d Cir. 1965); Xerox Corp. v. Pennington Manufacturing Co., ___ F. Supp. ___ (S.D.N.Y. Jan. 8, 1971) (67 Civ. 3302); Dynnon v. Mutual Life Insurance Co., 217 F.2d 497 (9th Cir.), cert. denied, 348 U.S. 971 (1955). See also, Dechler Metal Furniture Co. v. United States, 149 F.2d 130, 135 (2d Cir. 1945) (Frank, J.). Plaintiff's papers show that it has enough evidence to preclude our holding that plaintiff could not possibly prove its case.

Turning to the third cause of action which claims that the Company's May 1965 discontinuance of "Voluntary Group Life and Health Coverage theretofore maintained for retired employees" (Amended Compl. ¶6 of Third Cause of Action) breached the Welfare Agreement, certain additional facts are undisputed. The Welfare Agreement's "Insurance Program" expressly obligated the Company to provide certain group insurance benefits for "Employees" which in the case of any active employee would terminate upon termination of that employee's employment with the Company. The Agreement further provided that retired employees would receive certain group health benefits and that the group life insurance of retired employees would be "continued" in the amount of $2,250. Article XII of the Agreement expressly provided that "The Company shall be relieved of any liability to any Employee ... other than to maintain such [insurance] contract or contracts in force for

the duration of this Agreement." (Emphasis added)

On September 8, 1964, as we have already noted, the Welfare Agreement was terminated. On September 18, 1964, the Company informed its retired employees that although the termination ended the Company's obligation to provide group insurance under the Agreement upon expiration of the current month, it was going to put into effect "on a voluntary basis" certain modified or lesser group insurance "in the hope that a final solution will be found to the pending issues between the Company and the Union," which had led up to the termination. The letter further stated that the Company's voluntary provision of group insurance for retirees was "without any prejudice and without any waiver at all of our rights to discontinue such coverage at any time" and was not to be "construed to create any contractual relationship between the Company and any retired former employee" and did not affect "the termination of the Welfare Agreement, of all provisions thereof and of all the Company's former obligations thereunder."

The reduced insurance for retirees was then voluntarily provided by the Company up until May 12, 1965, when the Company terminated the insurance by letter to retired employees because the Company's insurance carrier refused to continue to cover exclusively for such an elderly group, the insurance of active employees having ended with the termination of the Welfare Agreement

in September 1964. The Union and retired employees accepted the reduced insurance thus voluntarily provided by the Company and did not make any claim of right thereto or to any insurance under the Welfare Agreement.

Upon this record we have no hesitancy in saying that the Union's demand for arbitration of the third claim should be dismissed as a matter of law. The Welfare Agreement had been effectively terminated pursuant to its terms a year and a half before the present action was commenced. No grievance or demand was ever made for arbitration of retired employees' insurance rights.[2] Thus, even assuming arbitration was available to the Union as a matter of right, the Union deliberately by-passed any arbitration route in order to seek damages here. On such a record arbitration must be denied as a matter of law. See The Polino, supra.

Upon the undisputed facts we also find that summary judgment should be granted dismissing the third cause of action as a matter of law. Even if we were to assume that the term "continued," as used in Section II, ¶C, of the Welfare Agreement's "Insurance Program" in reference to retired employees is ambiguous, the Union does not propose to offer any evidence to the effect that the term was intended to continue group life insurance in effect after the termination of the Welfare Agreement. Plaintiff's

single assertion that the Company is liable to maintain the life insurance coverage for all retired employees beyond the life of the Welfare Agreement (see Moss Aff. ¶48) is completely unsupported. Nowhere does plaintiff allege that it could produce parol evidence which might support its unusual reading of the contract. Plaintiff may not simply rest upon the mere denial of defendant's position. Rule 56(e), F.R.C.P. Since under these circumstances the construction of the Agreement presents a question of law for the court to decide, e.g., 3 Corbin on Contracts §535 at 19-20, et seq., it seems clear to us that Article III of the Welfare Agreement provided that insurance coverage of active employees would end immediately upon termination of their employment, whereas the coverage for retired employees would be continued in effect for the duration of the Welfare Agreement, which expressly provided that the Company would only be obligated to maintain insurance contracts "in force for the duration of this Agreement." The Union does not dispute the fact that the termination of the Welfare Agreement terminated the insurance rights of active employees. The intent to terminate as to all employees, including retirees, is fortified by the undisputed fact that group insurance, which rests upon the insurability of the entire group, would be unobtainable, except possibly at prohibitive rates, for a group limited to retirees, who are for the most part over 65 years of age.

For the foregoing reasons defendant's motion for summary judgment dismissing the second cause of action of the complaint is granted to the extent that plaintiffs' claim of right to arbitration is dismissed. Otherwise the motion is denied as to the second cause of action. Defendant's motion for summary judgment dismissing the third cause of action is granted.

It is so ordered.

Walter R. Mansfield
U.S.D.J.

Dated: February 22, 1971.

FOOTNOTES

1. The Union states that only life insurance benefits are the subject of this action, while termination of hospitalization and other insurance benefits has been the subject of another action: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO Locals 102 and 227 v. Goo Rubber & Tire Corp., 269 F. Supp. 708 (D.N.J. 1967).

2. Grievance No. 209 dealt solely with insurance benefits of striking employees and not with benefits of retirees.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

-against-

LEE NATIONAL CORPORATION,

Defendant.

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Docket Number: 66 Civil 1154

Calendar Number: 185 (4)

PRE-TRIAL ORDER

The parties to this action by their respective attorneys of record having appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure and Rules 13 and 14 of the Rules of this Court, the following action was taken:

* * *

III. The parties stipulated the following facts:

(a) AS TO THE FIRST CAUSE OF ACTION

1. For many years prior to December 20, 1963, the Company through its Republic Rubber Division manufactured various rubber products at a plant it owned and operated at Youngstown, Ohio.

2. At its Youngstown plant, the Company employed executives, general office personnel, foremen, assistant foremen, research personnel, chemists, timestudy men, hourly and piece-work production people, maintenance employees, inspectors, factory clerical workers, and laboratory testers.

3. At all times relevant to this cause of action while the Company owned and operated the Youngstown plant, a majority of the Company's hourly and piece-work production and maintenance employees, including the inspectors, factory clerical workers, and laboratory testers (but excluding general office workers, foremen, assistant foremen, heads of the experimental research department, salaried chemists, and timestudy men) were represented for collective bargaining purposes by Local 102 pursuant to an agreement between the Company and Local 102 known as the Youngstown "Working Agreement".

4. The Working Agreement covered such matters as wages, hours, and working conditions and contained a procedure for the settlement of grievances arising thereunder, providing arbitration as a final step under certain circumstances and conditions. In the spring of 1963 the parties were working under a Working Agreement signed July 3, 1961, but

effective May 1, 1961, which, according to its terms, expired on June 30, 1963.

5. With respect to arbitration, the said Working Agreement provided in pertinent part as follows:

"SECTION 3.

ARBITRATION

(1) In the event that disputes or grievances, except those involving general, or departmental, wage increases or decrease, have not been adjusted to the satisfaction of the parties as outlined elsewhere herein, then such unsettled grievances or disputes may be submitted to a board of arbitration in the following manner.

(2) The party so desiring arbitration shall, within 30 days of the date of the Company's final reply made under the grievance procedure, frame the question to be arbitrated, referring specifically to the provision to be interpreted, or the provision which has been allegedly misapplied wherever applicable, notify the other party in writing, and within five days the Union shall designate its representative and the Company shall designate its representative. These two shall mutually select the third member of the Board. In the event that the third member cannot be mutually agreed upon within ten days after filing of notice to arbitrate, then the two arbitrators shall jointly request the AMERICAN ARBITRATION ASSOCIATION, 9 Rockefeller Plaza, New York, N.Y., to appoint the Chairman of the Board of Arbitration.

(5) In the event either party refuses to submit an issue to arbitration within 10 days after the filing of the notice to arbitrate, then such refusal to arbitrate shall effect a default in favor of the other party."

6. The Working Agreement expired by its terms on June 30, 1963, but by consent of the parties it was continued in force and effect until August 6, 1963, while the parties met in negotiations looking toward agreement upon a new Working Agreement.

7. On or about August 6, 1963, the Company informed Local 102 that it was no longer willing to continue the operation of the Youngstown plant under the terms and conditions of the Working Agreement as theretofore extended and that the Company considered it necessary to put into effect at that plant various changes in wages, benefits, and working conditions. The Company did put such changes into effect on August 6, 1963, at which time Local 102 went on strike.

8. Following the strike, the Company and the Union continued to meet in negotiating sessions looking toward agreement upon a new Working Agreement. These sessions also involved discussions of the possibility that the Company might

sell the Youngstown Plant and of various agreements which the Company and Local 102 might enter into in connection with such possible sale.

9. During June and July 1963, Local 102 delivered to the Company a number of grievances. The parties are agreed that at various times the Company denies each and every one of those grievances.

10. On October 28, 1963, Local 102 and the Company executed a Memorandum of Understanding that the Welfare Agreement between the parties could be assigned by the Company to a purchaser of the Youngstown plant who would agree to assume all the obligations thereof and to recognize the established seniority rights of the Union employees of the Company at the time of the purchase. The Memorandum of Understanding also provided that if such purchaser were acceptable to the Union, the Company would be relieved of all its obligations under the Welfare Agreement except such payments thereunder as were due and payable at the date of the assignment. It further provided that a sale of the plant would not be construed as a discontinuance of operations within the meaning of para-

graph 4, part II of the Welfare Agreement. On the same date Local 102 and the Company executed another Memorandum of Understanding permitting the assignment of the Supplemental Unemployment Benefit contract between the parties to any purchaser of the Youngstown plant approved by the Union.

11. Also on October 28, 1963, the Union sent a letter to the Company advising the latter that Aeroquip Corporation of Jackson, Michigan, was an acceptable purchaser of the Company's Youngstown plant within the meaning of the Memorandum of Understanding referred to in paragraph 10 above, regarding the Employee Welfare Benefit Program.

12. On October 31, 1963, Local 102 and the Company entered into a new Working Agreement, effective November 1, 1963. The grievance and arbitration provisions of this new Working Agreement were identical to the grievance and arbitration provisions of the old Working Agreement under which the parties had worked prior to its termination on August 6, 1963.

13. After the effective date of the new Working Agreement on November 1, 1963, the Company recalled certain production employees at the Youngstown plant. On or about November 19, 1963, Local 102 delivered to the Company a grievance by one Frank A. Maizel relating to the Company's failure to recall him on November 8, 1963. On November 22, 1963, the Department Manager rejected the grievance. On December 13, 1963, at a later stage of the grievance procedure, Lowell E. Young for the Company denied the grievance. On December 18, 1963, the Union returned the Maizel grievance to Young for further consideration and on December 19, 1963, Young informed the Union that the Company's answer remained unchanged from the one given on December 13, 1963.

14. On December 13, 1963, the Union wrote to the Company advising that it wished to arbitrate certain of the grievances referred to in paragraph 9, above. On December 20, 1963, the Company wrote the Union that those grievances had all been denied at various times but in no event later than July 22, 1963, and that the grievances were not arbitrable since the Union did not request arbitration of such grievances within 30 days of the Company's final reply thereon as set forth in the Working Agreement.

15. On December 20, 1963, the Company by letter informed Local 102 that Aeroquip Corporation had purchased the plant and business of the Company's Republic Rubber Division, pursuant to a contract of sale dated October 31, 1963, that the Company had assigned to Aeroquip the new Working Agreement (called the "General Agreement" in the said letter and its enclosures), the Supplemental Unemployment Benefits Agreement, and that as a result of those assignments Aeroquip had assumed all of the Company's obligations thereunder, with certain exceptions with respect to the Welfare Agreement not relevant hereto. In that letter, the Company enclosed copies of the assignments and assumptions and requested the Union to confirm the contents of the letter by signing and returning a copy thereof, which the Union did.

16. On February 6, 1964, the Union by letter informed the Company that it wished to arbitrate the grievance for Frank Maizel which Young had denied.

(b) AS TO THE SECOND CAUSE OF ACTION

1. For many years the Company through its Lee Tire

Division manufactured at its Conshohocken plant automobile tires for distribution and sale throughout the Country. The Company sold its tires either through sales branches of its own or its wholly-owned sales subsidiary, Lee Tire Centers, Inc., or through the retail outlets of the Phillips Petroleum Company, The Pep Boys and a few other purchasers who sold Lee-built tires under their own names or labels.

2. At its Conshohocken plant, the Company employed executives, general office personnel, salesmen, factory office employees, foremen, assistant foremen, supervisory employees, production and maintenance workers, laboratory employees, test drivers and guards.

3. At all relevant times a majority of the Company's production and maintenance employees and test drivers were represented for collective bargaining purposes by Local 227 known as the "Working Agreement". This is separate and distinct from the so-called "Welfare Agreement" upon which the Second and Third Causes of Action are based. Pursuant to the Working Agreement the Company recognized Local 227

as the exclusive bargaining agent for all the Company's production and maintenance employees and test drivers at its Conshohocken plant on all matters pertaining to rates of pay, wages, hours and other conditions of employment. All other employees at the plant were expressly excluded from the Working Agreement and were not represented by any other Union.

4. The Working Agreement covered such matters as wages, hours and working conditions and contained a procedure for the settlement of grievances arising thereunder, providing arbitration as a final step under certain circumstances and conditions. The last Working Agreement between the Company and Local 227 was dated and effective June 30, 1961, and expired in July 1963.

5. On April 6, 1950, the Company had entered into a separate agreement with Local 227 under which the Company established a non-contributory pension plan for certain of the Company's employees. Also on April 6, 1950, the Company and Local 227 had entered into another agreement under which the Company agreed to provide certain insurance coverage to

employees covered by the Working Agreement. Effective July 1, 1959, the Company had provided a plan for supplemental workmen's compensation benefits for employees covered by the Working Agreement and also a plan for paying a service award and a special distribution on discontinuance of operations to certain of those employees upon the termination of their employment under certain circumstances and conditions.

On June 30, 1961, each of these four plans (i.e., the pension agreement, the insurance plan, the service awards and special distribution agreement, and the supplemental workmen's compensation plan) had been embodied, as then constituted and amended, in a single agreement between the Company and Local 227, effective July 1, 1961.

The Welfare Agreement was amended once more on December 17, 1962, retroactively effective to July 1, 1961. When reference is hereafter made to the provisions of the Welfare Agreement, such reference or quotation will be to the agreement of June 30, 1961, as amended by the agreement of December 17, 1962.

6. The Working Agreement and the Welfare Agreement as above-described were in full force and effect at the beginning of 1963. The expiration dates of the Working Agreement and the Welfare Agreement did not coincide. The agreed term of the Working Agreement, unless otherwise extended, was to run from June 30, 1961, to June 30, 1963, and the Welfare Agreement from July 1, 1961, until June 30, 1966. However, the Welfare Agreement (Article V, pars. 6-8, pp. 25-26) provided that it could be reopened after May 1, 1964, by either party for renegotiation and that failure to agree on new terms within a stipulated period of time would permit either party to terminate the Welfare Agreement upon stipulated notice, together with the Working Agreement, which would leave the Union free to strike, if it wished, if there were no Welfare Agreement in effect. The Working Agreement (Article 18, Section 18.02, pp. 65-66) also provided that it could be terminated by either party upon stipulated notice if, after reopening, the Welfare Agreement had been terminated.

7. At a meeting in the spring of 1963 the International Union and the Company agreed to retain Strong-Narovec & Company, á Cleveland management consultant firm, to study and make a report upon various aspects of the

Company's operations. The International Union and the Company shared the cost of this study equally and each received copies of the report, dated June 14, 1963.

8. On April 18, 1963, the Company sent to the Union the formal written notice required to prevent the automatic extension of the Working Agreement on its termination date of June 30, 1963, together with the Company's offer to meet and confer with the Union for the purpose of negotiating a new agreement to replace it.

9. On April 29, 1963, the Company, in turn, received from the Union formal written notice of the Union's desire to terminate the Working Agreement on June 30, 1963, if a satisfactory settlement was not reached on amendments to that agreement, together with the Union's offer to meet and negotiate on the same.

10. The first negotiating session between the Company and the Union as to the terms upon which either was willing to enter into a new collective bargaining agreement effective upon the expiration of the then current Working Agreement took place on May 29, 1963. Thereafter, the Company and the Union held negotiating sessions with respect to a new Working

Agreement on May 29 and 31 and on June 7, 10, 11 and 14, 1963, but no agreement was reached on any of the substantial points of disagreement.

11. At the negotiation session on June 10, Local 227's president informed the Company's negotiating committee that at a meeting the previous night the Union had voted to reject all the Company's proposals and to take a formal strike vote. Several days later the Union's president informed Willard L. Heinrich that the Union had authorized a strike at the discretion of Local 227's Executive Board.

12. On or about June 14, both the Union and the Company received the report of Strong-Narovec & Company. Following receipt of that report by both the Company and the Union, there were six more negotiating sessions prior to June 30, the expiration date of the Working Agreement according to its terms. The dates of these sessions were June 19, 21, 24, 26, 27 and 28. Beginning with the meeting of June 19, 1963, the parties were assisted in the negotiations by Commissioner Leonard McGee of the Federal Mediation and Conciliation Service who thereafter attended every negotiating session between the parties through February 3, 1964.

13. Eventually, on June 29, one day before the Working Agreement expiration date, the Company informed the Union by telegram that, despite Union rejection of the Company's proposed extension agreement, the Company's plant would be open for business on Monday, July 1, 1963, and that the Company would continue to maintain the same wages, hours and working conditions as were contained in the expiring Working Agreement until formal notice by the Company to the contrary.

14. Two days later, the Company received a telegram from the Union rejecting the Company's latest offer for a formal extension of the Working Agreement but announcing that its members would work on a day to day basis as long as the Company continued to apply the terms and conditions of all agreements, reserving to Local 227's Executive Board the right to call a strike at any time it desired.

15. Thereafter, the Company and the Union continued to meet in negotiating sessions. Such sessions were held on July 1, 3, 5, 11 and 12. At the end of the July 12 meeting the Company negotiators informed the Union negotiators that it considered the negotiations to be deadlocked on vital and

fundamental issues, that it felt it was impossible to continue the old terms and conditions any longer, and that the Company considered it necessary to put into effect various changes in wages, benefits, and working conditions.

16. On July 16, the Company by letter formally notified Local 227 that beginning July 18 the Company would no longer apply the terms of the old Working Agreement and would instead put into effect certain new terms and conditions of employment designed to permit the Company to operate on a more competitive basis.

At a meeting between the Company and Union representatives later that same day, attended as usual by a mediator of the Federal Mediation and Conciliation Service, the Company negotiators again advised the Union representatives as above set forth. They informed the Local 227 negotiating committee that the Working Agreement had expired and was no longer in effect and that on July 18 the Company would put into effect certain new terms and conditions of employment, copies of which the Company then gave to the Union.

Local 227's negotiating committee then adjourned to the Union hall to discuss the matter. Later that afternoon, without returning to the meeting, Local 227's president notified the Company by telephone that the Union would not accept the new working rules, was cancelling the day to day agreement immediately, and was going on strike. Thereupon, at approximately 2:45 that afternoon, the Union and its members went out on strike and began to picket the plant.

17. The Working Agreement which had terminated according to its terms on June 30, 1963, subject to the informal extensions above-described, was thus finally terminated and made no longer applicable or effective on that afternoon of July 16, 1963.

18. The strike and attendant picketing by Local 227 at the Conshohocken plant began on the afternoon of July 16, 1963, and continued until some time in 1965. During this period prior to 1965 the Company met with the Union on numerous occasions, many of which included the attendance and assistance of a Federal Mediation Commissioner, in unsuccess-

ful efforts to agree upon acceptable terms of a new Working Agreement.

19. Immediately prior to the strike, the Company employed at the plant between 300 and 350 Union production employees engaged in the operation of production equipment sufficient to manufacture at least 2,000 tires per day. Some of these tires were manufactured specially for particular customers such as Phillips Petroleum Company and The Pep Boys who sold them under their own labels; the remainder were manufactured for the Company itself to be sold under the Lee name through its own wholly-owned sales subsidiary, Lee Tire Centers, Inc.

In addition to the Union production employees above-described, the Company employed approximately 50 technical or supervisory employees, not members of the Union, ie.: plant manager's staff (3), scheduling of production (3), industrial engineering (4), quality control (1), maintenance (3), research and testing (10), engineering (3), mill and calendar (6), tire building (4), fabric preparation (2), curing (4), final inspection (1), and receiving and shipping (3).

Administrative duties occupied an additional 73 employees in the following categories: accounting and auditing (20), credit (9), taxes (3), the Treasurer's office (3), IBM computer operators (7), direct sales (6), branch sales and sales administration (6), purchasing (2), miscellaneous clerical (2), and general administration (6).

20. After the strike began, the Company continued to employ at the plant various employees in various capacities. The Company claims that its records show that on December 1, 1964, the staff still employed at the plant amounted to 55 persons engaged in the following activities: standby production (5), maintenance (2), fire watch (4), scheduling (2), accounting and auditing (21), credit (8), tax (2), general administration (3), miscellaneous clerical (2), direct sales (1), and branch sales and sales administration (5).

21. By an agreement dated August 28, 1963, the Company, through its wholly-owned subsidiary, Lee Tire Centers, Inc., guaranteed by the Company, contracted with the Mohawk Rubber Company for Mohawk to manufacture Lee Tires at Mohawk's plant

in Helena, Arkansas, from Lee molds furnished by the Company for sale by the Company to its customers through its regular distribution outlets.

When this agreement with Mohawk Rubber Company terminated in early 1964 the Company, again through its wholly-owned subsidiary Lee Tire Centers, Inc., made a similar agreement with the United States Rubber Company.

22. On May 1, 1964, the Union was still on strike, there was no existing Working Agreement between the Company and the Union, and negotiations for a new one were continuing though deadlocked. On that date, the Company notified Local 227 by letter that it wished to open for renegotiation the provisions of the Welfare Agreement as specifically permitted by Article V, paragraph 7, thereof, the first negotiating session being set for May 21, 1964.

23. Thereafter, the Company furnished to the Union its requested changes in the Welfare Agreement. The Company and the Union then met in negotiating sessions on the Company's proposals on May 21 and on June 18, 24 and 30, and July 7, 1964, to revise the Welfare Agreement.

24. On July 8, 1964, the Company exercised its right, pursuant to Article V, paragraph 7, of the Welfare Agreement, to terminate that agreement sixty (60) days thereafter.

25. After the said notice of termination, the Company and the Union continued to meet in negotiating sessions, attended and assisted by the Federal Mediation Commissioner, on July 14, 21 and 28, August 4 and 18, and September 1, 1964.

26. On September 8, 1964, the Welfare Agreement expired pursuant to its terms and the Company notice previously given on July 8, 1964.

27. On September 17, 1964, the Company and the Union again met unsuccessfully in negotiations. When the meeting adjourned, no date was fixed for another negotiating session:

28. On September 18 the Company by letter notified its retired employees that the Welfare Agreement had been terminated on September 8 pursuant to its provisions but that insurance coverage thereunder would continue, because of premiums already paid, until the end of September.

29. On November 25, 1964, the Company and the Union again met in a negotiating session with the federal mediator. The Company then reported that its Board of Directors would meet on November 30 to consider the Company's financial statements for the fiscal year ended October 31, 1964, and probably to consider the future of the Company's tire manufacturing activities at the Conshohocken plant. The parties agreed to meet again on December 10 so that the Company could report to the Union any action or pertinent information resulting from the forthcoming Board of Directors' meeting.

30. On November 30 the Company's Board of Directors met at the Company's office in New York, New York, and the Company's records of that meeting show the adoption of the following resolution:

> "RESOLVED that all manufacturing operations at the Conshohocken, Pennsylvania plant of this Corporation be discontinued permanently and the Corporation, accordingly withdraw from tire manufacturing activities following review and discussion thereof with Local 227."

31. On December 10 the Company and the Union met as previously agreed. Heinrich reported that the Board of Directors had decided to discontinue permanently the manufacturing operations at the Conshohocken plant. The Union

stated that it was still on strike and would continue to picket the Conshohocken plant.

32. On December 14, 1964, the Company by letter announced to all its employees and retired former employees the Board of Directors' decision of November 30 to discontinue permanently all the manufacturing operations at the Conshohocken plant.

In the same envelope the Company sent to all employees other than retirees a form letter addressed personally to each such employee. This letter announced that as a result of the decision to discontinue permanently all the manufacturing operations at the Conshohocken plant the employee's employment was thereby terminated and his records permanently closed.

33. On or about January 13, 1965, the Company received from the Union two letters, each dated January 11, 1965, stating that certain named employees elected to receive a special distribution on discontinuance of operations under Article II, Section VI, of the Welfare Agreement. At the same time (either enclosed in the said two letters or delivered separately), the Company received from many of its former

employees in the bargaining unit represented by Local 227 forms dated January 7 through 11, 1965, which stated that they elected to receive a special distribution on discontinuance of operations under the same provision.

34. On January 19, 1965, the Company, by letter returned to Charles Hess, President of Local 227, two letters signed by him electing to receive a special distribution on discontinuance of operations, on the grounds that they were invalid and without force or effect.

35. On January 25, 1965, the Company, by individual letter, rejected and returned to each employee his claim for a special distribution set forth on the forms described above, on the ground that the claim was without merit since the Company had no obligation to pay any such special distribution.

* * *

VIII. Since the parties disagree as to the issues to be tried, each has formulated the issues to be tried as follows:

1. Plaintiffs contend that the issues to be tried are as follows:

AS TO THE SECOND CAUSE OF ACTION

(a) As those material terms are defined in the Welfare Agreement, Article II, Section VI, did the defendant completely and permanently discontinue all operations at the Conshohocken plant covered by the Welfare Agreement on or before July 17, 1963 ?

(b) From July 1962 to September 8, 1964, did the defendant pursue a course of conduct calculated to defraud and deceive the plaintiffs as to the Company's intentions with respect to the further continuance of operations at the Conshohocken plant and thereby camouflage its actual breach of the Welfare Agreement then in effect ?

(c) Did the defendant breach the Welfare Agreement as it existed between the parties on or about July 16, 1963?

(d) Did the defendant breach the Welfare Agreement as it existed between the parties from or after July 1962 ?

(e) Did the defendant breach the Welfare Agreement as it existed between the parties at any time prior to September 8, 1964 ?

2. Defendant contends that the issues to be tried are as follows:

AS TO THE SECOND CAUSE OF ACTION

When did defendant completely and permanently discontinue all operations at the Conshohocken plant ?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED RUBBER, CORK, LINOLEUM and PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM and PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association, Plaintiffs, - against - LEE NATIONAL CORPORATION, Defendant.	OPINION GRANTING DEFENDANT'S MOTION TO DISMISS FIRST CAUSE OF ACTION AND REQUESTING ARGUMENT ON RE-OPENING AS TO THE SECOND CAUSE OF ACTION 66 Civ. 1154

A P P E A R A N C E S :

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POLETTI FREIDIN PRASHKER FELDMAN & GARTNER
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Peyton B. Moss, Of Counsel

KNAPP, J.

At the close of the plaintiff's case at trial of the above-entitled action, defendant moved to dismiss the complaint. I granted that motion from the bench with respect to plaintiff's second cause of action, and requested post-trial briefs with respect to the first. For the reasons that follow I grant the motion to dismiss plaintiff's first cause of action, but request new briefs on whether the case should be re-opened as to the second cause of action.

1. The first cause of action

The first cause of action concerns various grievances filed with one exception in June and July 1963 by members of the plaintiff Union at defendant's Republic Rubber Division plant in Youngstown, Ohio. The complaint seeks judgment on or-in the alternative - an order to compel arbitration of those grievances.

Defendant asserts three independent grounds for dismissal: first, that the Union waived its right to arbitrate, second, that the oral agreement to arbitrate testified to at trial by the former vice-president of the Union is not enforceable because it was made without real or apparent authority and never committed to writing, and third, that defendant was relieved of any and all obligations with respect to the grievances when it sold the plant to Aeroquip

under contract dated October 31, 1963. I am persuaded that the complaint must be dismissed on the third ground.

Assuming arguendo that the Union timely requested arbitration or that defendant could be bound by the oral promise to arbitrate made by its negotiators - and while the former proposition strikes me as meritorious, the latter does not - the evidence unequivocally establishes both that Aeroquip assumed all obligations of its seller, and that the Union explicitly approved that assumption.

Particularly damaging to the plaintiff's case is the letter dated December 20, 1963 from Mr. Clairmont, defendant's Chairman of the Board at that time, to the Union - which was specifically "accepted and approved" by the Union - in which he advised the Union of the sale to Aeroquip and specified the agreements that had been assigned therewith. While assignment of the Welfare Agreement was expressly conditioned by caveats which left defendant Lee liable for particular grievances pending under that Agreement, no caveat of any sort similarly qualified the assignment of the Working Agreement (there referred to as the "general agreement") under which the instant grievances arose.

The conclusion that Aeroquip assumed liability for Working Agreement grievances finds corroboration in the testimony of the Union vice-president that subsequent to the sale to Aeroquip

he received various correspondence on Aeroquip stationery regarding possible disposition of the instant grievances. While plaintiff labels the letterhead "a coincidence" I am constrained to find otherwise.

Plaintiff attempts to escape from the inescapable facts just recited by invoking principles of "specific" assumption, delegation, and suretyship. As to its first point, plaintiff itself concedes that an assignee (Aeroquip) is liable for those obligations impliedly assumed. Aeroquip on December 20, 1963 assumed without reservation all obligations under the new Working Agreement arrived at by defendant Lee and the Union on October 31, 1963. The Union rested and continues to rest its demand for arbitration of the grievances, on the grievance provisions (identical to those contained in the old Working Agreement) contained in the new Working Agreement. The inevitable conclusion to the syllogism is that Aeroquip impliedly assumed responsibility for the grievances.

Plaintiff's reliance on delegation and "standby" liability theories is misplaced. Defendant did not delegate any duties to Aeroquip, but rather assigned its collective bargaining agreements to Aeroquip pursuant to the sale of the Youngstown plant with neither objection from nor qualification sought by the Union. Inexplicable as it may seem that the Union chose not to sue Aeroquip

as an additional defendant on this cause of action, the defendant whom it did name is clearly not liable.

2. The second cause of action

Having carefully reviewed the testimony concerning the new "tread tuber" and the undisputedly salutary effect it would have upon operations at defendant's Conshohocken plant, and having found that the minutes of the negotiations between defendant's and plaintiff's representatives - introduced at the very conclusion of the plaintiff's case - disclose no effort made by defendant to use the new tread tuber as a bargaining tool for resolving the impasse on the key job evaluation issue, I have tentatively concluded that the interests of justice would be served by re-opening the case to permit either side to introduce testimony on the question of why defendant failed to make such effort. It is my present impression that if defendant is unable to offer a persuasive explanation, plaintiff's theory that defendant sought not to undo but to perpetuate the impasse would be measurably less hypothetical than it appeared when I rejected it from the bench. Accordingly, the parties are directed to prepare for argument on the merit of this suggestion and to call chambers to arrange a timetable for such argument.

IT IS SO ORDERED.

Dated: New York, New York
May 16, 1973.

WHITMAN KNAPP, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

-against-

LEE NATIONAL CORPORATION,

Defendant.

----------x

MEMORANDUM AND ORDER

66 Civ. 1154

KNAPP, D. J.

The memoranda submitted pursuant to the May 30 conference in chambers have left me unpersuaded that plaintiffs have born their burden of proof on the present state of the record. However, plaintiffs having represented that they have located the potential witness J. J. Conway and that he is prepared to respond to subpoena, I will reopen the case to permit plaintiffs to offer Mr. Conway's testimony if they be so advised. I do this reluctantly because plaintiffs have offered no semblance of excuse for their failure to locate and interview Mr. Conway prior to trial. However, it appears to me that his testimony may well be most helpful in determining the issues posed by the second cause of action, and this law suit should be decided on the available evidence rather than on the diligence of respective counsel.

In the event plaintiffs elect to proceed in the manner suggested, their counsel are to thoroughly interview Mr. Conway prior to producing him and to decide in advance what questions they intend to ask him, and which attorney is to do the questioning. Only one attorney for each side will be permitted to question Mr. Conway, and no time will be allowed for between-question conferences of counsel.

Plaintiffs are directed to advise defendant's counsel of their intentions in the matter and, if they decide to produce Mr. Conway, to communicate with my chambers on September 5th with a view to arranging a schedule.

SO ORDERED.

Dated: August 27, 1973

Whitman Knapp
U. S. D. J.

By: S/ Arnold Bauman
Arnold Bauman
U. S. D. J.

1494A

U.S. DISTRICT COURT
FILED
SEP 11 1973
S. D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

-against-

LEE NATIONAL CORPORATION,

Defendant.

----------x

SUPPLEMENTAL ORDER

66 Civ. 1154

KNAPP, D. J.

With respect to the memorandum and order dated August 27, 1973, it occurs to me that there may be a need for clarification on two points. First, in instructing plaintiffs' counsel to thoroughly interview Mr. Conway, it was not my intention thereby to imply that defendant's counsel should not do the same. On the contrary, while the court realizes that it cannot direct any witness to confer with any counsel, the court would deem it a favor if before trial Mr. Conway could make himself available to both counsel to the end that his trial testimony may proceed as expeditiously as possible.

Second, the scope of the examination of Mr. Conway is not limited to the subject of the tread tuber. Mr. Conway may

be questioned as to anything relevant.

IT IS SO ORDERED.

Dated: September 11, 1973

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED RUBBER, CORK, LINOLEUM and PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM and PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

- against -

LEE NATIONAL CORPORATION,

Defendant.

OPINION DISMISSING COMPLAINT

66 Civ. 1154

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Of Counsel

KNAPP, D.J.

The issues here presented are fully set forth in Judge Mansfield's opinion denying summary judgment (323 F. Supp. 1181). The basic question is whether defendant and its officers conspired to defraud plaintiff unions by forcing a strike and deliberately refusing meaningfully to negotiate, to the end that the strike would continue for a year and a half by which time certain rights valuable to plaintiff unions would have expired. The procedural history of this case after the start of trial has not been altogether happy. In fact, it might lead some observers to conclude that the process of Presidential appointment, Senatorial confirmation and ceremonial induction does not automatically and instantly produce an experienced trial judge. However, such history is germane to the decision and will be briefly stated.

The trial started on January 23, 1973. On February 14th plaintiffs rested. During argument of defendant's motion to dismiss, the court indicated that it would probably reserve decision on the motion on the general theory that plaintiffs should have a crack at cross-examining defendant's witnesses. The Court suggested, however, that if defendant should have the courage to rest at that point, the Court might well give judgment for defendant. Defense counsel indicated that he might do just that. This idea struck terror in plaintiffs' heart, and they immediately asked leave to

reopen their case. Such leave was granted.

Plaintiffs thereupon called as their witnesses Maurice M. Clairmont and Willard R. Heinrich, two witnesses defendant would undoubtedly have called had it proceeded with its defense. Plaintiffs, in addition, called or recalled four witnesses of its own and offered additional exhibits. On February 26th plaintiffs again rested. At this point, after hearing argument, the Court dismissed the second cause of action and reserved decision as to the first.*

The Court subsequently became concerned - as to its announced decision with respect to the second cause of action - with two aspects of the case. First, the court feared that it might have underestimated the force of plaintiffs' contention that bad faith on defendant's part should be inferred from its total failure to exploit, in its negotiations with plaintiff unions, the possibilities of certain new machinery which had been ordered but not installed. Second, it appeared to the Court from the record before it that one Joseph Conway, defendant's personnel manager, would almost surely have had access to evidence of any conspiracy against plaintiffs that might have existed, and that his sympathies would most surely be with plaintiffs. Accordingly, after further discussion between

* The first cause of action was dismissed in a subsequent memorandum, and is not here involved.

Court and counsel, another hearing was held on September 19, 20 and 21, at which plaintiffs produced Mr. Conway as a witness. At the conclusion of his testimony, plaintiffs rested for the third time and defendant made its third motion to dismiss. For reasons stated below, that motion is granted.

It is obvious in retrospect that, had the Court withheld its comments during argument of the first motion to dismiss and simply denied it or reserved decision, defendant would have proceeded with its case (probably producing the same two witnesses plaintiff first called on reopening), and the matter would long since have been disposed of. However, that is wisdom for another day.

The essential theory of plaintiff unions' case was aptly described by Judge Mansfield in his opinion denying defendant's motion for summary judgment (at 1185):

> "The essential theory of the Union's case is that the Company [i.e. Clairmont] perpetrated a fraud upon its Local by unilaterally imposing conditions which provoked and forced a strike, thus making it appear that the Company was shut down by unreasonable Union members striking over simply economic issues."

In commenting on this theory, Judge Mansfield observed (ibid):

> "Thus the Union must prove that the discontinuance of plant operations by the Company actually occurred at or about the time when the strike commenced,

which was on July 16, 1963, rather than on November 30, 1964, when the Company's Board voted to discontinue operations. Upon the record before us the Union appears to have almost no chance at all of sustaining this heavy burden."

My finding that the plaintiff unions have failed to sustain the burden of establishing their above-described "essential theory" rests upon the following considerations:

1. I accept as credible the witness Clairmont's outright denial that he or his company harbored the necessary fraudulent intent.

2. I find that the testimony of the witnesses Heinrich and Conway (aside from the latter's present recollection of his then opinion of Clairmont's motives) is more consistent with the absence than with the presence of a plan to defraud.

3. I find that the conceded extrinsic facts are similarly more consistent with the absence rather than the presence of such a plan.

Any necessary elaboration on the foregoing findings of ultimate fact will appear in my colloquy with counsel on themaking of the third motion to dismiss. However, I should like to make a

brief comment on the testimony of Mr. Conway. He having impressed me as an altogether truthful witness, I would be disturbed by his present firm recollection of his then belief that Clairmont's intention had always been to dismantle the company rather than save it, were it not that, on the basis of Mr. Conway's own testimony, I find that this belief is one which developed over the years since the events in question, and that it was not entertained by Mr. Conway at the time. At various points of his testimony it was developed that Mr. Conway enjoyed close and friendly relations with Mr. Heinrich and other persons brought in by the Clairmont regime. Yet, in answer to my question, Mr. Conway asserted that he had never at any time voiced his suspicion of Mr. Clairmont's motives to any of these persons. Indeed he did not appear to be certain that he had voiced them even to his wife. It is inconceivable to me - in view of the important position he held with the company and the importance of the company to his own professional well-being - that he could have then harbored the opinion that Mr. Clairmont was out to destroy the company without in some way discussing such opinion with someone. He would - at the beginning at least - have wanted to discuss such an opinion with Mr. Heinrich and others in order to assure himself that it was not true.

For the foregoing reasons and for those set forth on

the record at the time of defendant's third motion to dismiss, the second cause of action is dismissed and final judgment will be entered dismissing the complaint in its entirety.

SO ORDERED.

Dated: New York, New York

October 31, 1973.

/s/ WHITMAN KNAPP

WHITMAN KNAPP, U.S.D.J.

1503A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, AN UNINCORPORATED ASSOCIATION, AND UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, AN UNINCORPORATED ASSOCIATION,

Plaintiffs,

-against-

LEE NATIONAL CORPORATION,

Defendant.

FILED IN THE U.S. DISTRICT COURT ON NOVEMBER 7,1973

66 Civil 1154(WK)

JUDGMENT

The issues in the above entitled action having been brought on regularly for trial before the Honorable Whitman Knapp, United States District Judge, on January 23, 24, 25, 26, February 5, 6, 7, 8, 13, 14, 21, 22, 23, 26 September 19, 20 and 21, 1973, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on November 2, 1973, having handed down its opinion dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED, that defendant, LEE NATIONAL CORPORATION, have judgment against the plaintiffs,

1504A

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, AN UNINCORPORATED ASSOCIATION, AND UNITED RUBBER, CORK AND LINOLEUM, AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, AN UNINCORPORATED ASSOCIATION, dismissing the complaint in its entirety.

Dated: New York, N.Y.

November 7, 1973

Raymond F. Burghardt
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED RUBBER, CORK, LINOLEUM and PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM and PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

- against -

LEE NATIONAL CORPORATION,

Defendant.

MEMORANDUM AND ORDER

66 Civ. 1154

- -x

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Peyton H. Moss, Of Counsel

KNAPP, D.J.

This action was brought against an employer for alleged breaches of collective bargaining contracts. At the close of plaintiff's case, the Court indicated its intention to grant defendant's motion to dismiss the second cause of action, and requested post-trial briefs with respect to the first. The Court thereafter dismissed the first cause of action but requested new briefs on the proposed re-opening of the case as to the second. After the submission of these additional briefs, the Court dismissed the second cause of action. The successful defendant now moves pursuant to Rule 54(d) of the Federal Rules of Civil Procedure for review of the bill of costs as taxed against plaintiff by the Clerk of this Court. Specifically, the item in controversy is $5,739.95 for two copies of the trial transcript, at the daily rate, which the Clerk refused to tax. One copy of the daily transcript was delivered to the Court, and the other to defendant's counsel.

Defendant contends that the stenographic transcript prepared daily was necessary in this action because of the projected length and complexity of the trial. Plaintiff denies the necessity of not only the expedited copy, but the regular transcript, and urges that it was merely a convenience to counsel.

Title 28 U.S.C. §1920 provides that:

> "A judge or clerk of any court of the United States may tax as costs the following:
>
> * * * *
>
> (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case."

The determination as to whether the transcript is "necessarily obtained for use in the case" is to be left to the discretion of the trial judge. Farmer v. Arabian American Oil (1964) 379 U.S. 227; Syracuse Broadcasting Corporation v. Newhouse (2d Cir. 1963) 319 F.2d 683; Perlman v. Feldmann (D. Conn. 1953) 116 F. Supp. 102, cert. denied (1955) 349 U.S. 952. In reaching its decision, the judge should look to the length and complexity of the trial, and the need of the court and the parties for the transcript. Cooke v. Universal Pictures Co. (S.D.N.Y. 1955) 135 F. Supp. 480; Bank of America v. Loew's International Corporation (S.D.N.Y. 1958) 163 F. Supp. 924; Electronic Specialty Co. v. International Controls Corp. (S.D.N.Y. 1969) 47 F.R.D. 158.

In this case the Court believes that it was necessary that both the defendant and the Court be furnished a stenographic record. The trial of this case stretched over a four-week period, and thereafter the Court twice requested the parties to submit additional briefs on both causes of action. The availability of the transcript became more than a convenience for the Court in making its rulings on the motions presented. However, although

necessity has been demonstrated, there is no showing in the record that the circumstances were such as to justify requiring the defeated party to bear the additional expense involved in obtaining expedited copy. The case did not involve expert witnesses whose cross-examination required knowledge of the exact wording of their previous testimony or of that of any other witness, and time was not of the essence in this 1966 law suit. Therefore, the Court will allow the cost of the transcript to be taxed at the regular rate, but not at the daily rate.

SO ORDERED.

Dated: New York, New York
February 6, 1974.

WHITMAN KNAPP, U.S.D.J.

1509A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC
Filed Feb. 13, 1974
SD NY

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

-against-

LEE NATIONAL CORPORATION,

Defendant.

66 Civil 1154

(WK)

ORDER

The defendant, Lee National Corporation, having moved, pursuant to Rule 54(d) of the Rules of Civil Procedure, for a review of the action of the Clerk in taxing costs herein and for an order allowing the item set forth in the bill of costs submitted by the defendant with respect to fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case within the meaning of 28 U.S.C. §1920(2), and the said motion having come to be heard before this court on January 25, 1974, and the court having heard the argument of counsel, and due deliberation

having been had thereon, it is

ORDERED, that the application to tax the court reporter's charges for reporting and transcribing the record of the trial, including the cost at the regular rate of the original copy provided the court and one copy for defendant's counsel amounting to $3,176.30, is hereby granted, and the Clerk of this court is directed to insert said sum in the judgment herein.

Dated: New York, New York
February 8, 1974

WHITMAN KNAPP
U.S.D.J.

STATEMENT AS TO EXHIBITS

The Exhibits for the Appendix are reproduced in seperate volumes with page numbers sequential from this page on.